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A CRITICAL STUDY OF NULLIFICATION IN SOUTH CAROLINA

BY

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PREFACE.

THE nullification movement with which this monograph deals derives its chief interest from the terrible issues of 1860-65, which were its logical outcome. The secession movement dates definitely from 1824. In the period from 1824 to 1832 all the principles that were fought for in the Civil War were formally enunciated in South Carolina, and a determination to apply them, if it should become necessary, was repeatedly expressed. Secession became a subject of daily thought and conversation; and familiarity with it bred contempt for its possible dangers. Further, in this period the bearing of the institution of slavery on political and economic issues became clearly recognized both in the North and in the South; the fears of the Southerners for the safety of the institution were awakened, and their passions were raised to the highest pitch. By 1832 the feelings of the majority of South Carolinians were alienated from the Union. The State remained in the Union, it is true; but her ordinary attitude towards it from this time was one at least of indifference. Many

of her wisest and most far-sighted citizens felt that the final struggle was only a matter of time,—only a matter of arousing the more conservative Southern States.

The writer has not here undertaken to discuss nullification in all its aspects. It would have been extremely tedious to go over the ground that has been covered in a masterly way by the great constitutional writers and speakers of the past and present. His aim is principally to look at the movement from within, to trace its origin and development inside the boundaries of South Carolina, and to discuss the validity of the leading doctrine in the light of the precedents on which the nullifiers mainly relied and of South Carolina's earlier history. Most of the existing accounts of this subject are incomplete and unsatisfactory, because their authors, writing from the outside, and as a part of a more general work, fixed their attention to an unwarranted extent on the doings of certain conspicuous public men from South Carolina, whose motives and conduct were assumed to be truly representative. The present writer has attempted to place these so-called leaders in their proper perspective, to trace the growth of popular feeling and to estimate its influence. While his attempt is not satisfactory even to himself, still he feels that the subject stands out in a truer light when viewed from within. His study of this particular movement from the point of view here indicated confirms his early impressions that many periods of American history

must be rewritten after careful investigations have been made of tendencies and developments within particular States or groups of States. The results of this investigation seem to differ in several important respects from the conventional, accepted views, and are presented with due deference to possible criticism. Errors of fact and judgment will doubtless be pointed out, and will gladly be corrected.

The materials on which the account is based were collected while the writer was a member of the Graduate School of Harvard University, under the special oversight of Professor Albert Bushnell Hart, to whom many obligations are acknowledged.

DAVID FRANKLIN HOUSTON.

UNIVERSITY OF TEXAS, AUSTIN,
June 1, 1896.

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A CRITICAL STUDY
OF
NULLIFICATION
IN
SOUTH CAROLINA.

CHAPTER I.

BROAD CONSTRUCTION IN SOUTH CAROLINA.
1789-1823.

THE accepted accounts of the famous episode which this monograph attempts to describe furnish evidence of a tendency of American historians, in their study of our great political movements; they lay undue stress on the personal element; they pay much attention to individuals and comparatively little to conditions. It is not difficult to comprehend why such should be the case. To observe the movements of the masses under favorable conditions is by no means easy; it is impossible to follow them in a distant and crudely developed community unaccustomed to record-keeping. The conduct of a man of marked individuality at the centre of the nation's political activities lies in stronger light, and every act appears to the observer to carry with it special significance.

Influence of
great men
exaggerated.

South Carolina, the centre of the nullification movement, has never laid herself open to the charge of extravagance in expending energy or money in making

Illustrated in
accounts of
nullification.

for posterity careful records of her own great deeds or those of her great men. She has been as backward in preserving records as she has been forward in furnishing acts worth recording. And during the period in question she was represented in the eyes of the nation by a man of remarkably strong individuality. Hence, to every historian of the time the nullification movement has been Calhoun first, Calhoun last, and Calhoun all the time. One writer, for example, goes so far as to represent the movement as a petulant outburst of a schemer, soured and embittered by his disappointment, who preferred to be the first statesman in the Slave States rather than the second in the Union; and who with singular ability addressed himself to the promotion of sectionalism.¹ Without wasting time in criticising this misrepresentation, and others of its kind, we may proceed at once to consider the true character of the movement, — its causes, its progress, its effects.

South
Carolina
to 1820.

To execute this task properly, it is necessary to go back as far as 1789 and to notice briefly the course of federal legislation and the attitude of South Carolina down to about 1820, when an organized opposition to the course of the federal government began to make itself felt in that State. This review will serve as a background for the whole discussion; for it will tend to make clear that the nullification movement, instead of being the outcome of personal spite or disappointment, was the natural result of an attempt of a central body to legislate for a country having two large sections whose social and industrial conditions were radically different.

Object of the
movement
to prevent
centralization.

The nullification movement was set on foot to check what was believed to be the tendency on the part of the federal government to centralization, and to more active interference in every direction. The leaders in South

¹ J. W. Draper, *Civil War*, I. 381.

Carolina were convinced that the policy already entered upon by the federal government was destructive to the interests of the South; and they had no doubt that such a policy, if persisted in, would lead to the impoverishment of their section and to the disruption of all its institutions. They therefore began, about 1820, to organize their followers in opposition to every step that tended directly or indirectly towards centralization. Chief among the measures that gave evidence of such a tendency were those looking to the strengthening of the National Bank, the extension of internal improvements, and the raising of protective duties. Inasmuch as the protective policy seemed to be most aggressive, and most clearly and immediately harmful, it was selected as the principal point of attack. It is to the tariff policy of the federal government, therefore, and to the attitude of South Carolina thereon, that attention must first be called.

Attack on
protective
policy.

South Carolina may fairly claim that her political conduct has always been consistent at least in one direction, namely, in her opposition, not to import duties as such, or to high import duties, where the necessities of the treasury demanded them, but to high import duties laid for the sake of protection. To those who may be inclined to question this statement it may be necessary to point out that the statement is made, not of Calhoun, but of South Carolina; for South Carolina and Calhoun did not always stand for the same thing. Against high import duties for the sake of protection, South Carolina entered her protest in the very first Congress, and it has stood to the present day. In the House, in 1789, we find Sterling Tucker urging members from other States to exercise liberality and moderation in their demands, and to desist from pressing measures "big with oppression and tending to bur-

South
Carolina's
opposition to
this policy.

den particular States.”¹ But it was in the Senate that the most vigorous attacks were made on the proposed tariff legislation. When a report was presented recommending certain duties that were intended to be prohibitory, Pierce Butler, only lately arrived from South Carolina, took the floor, and, as Maclay, the eccentric senator from Pennsylvania, tells us, “flamed like a meteor. He arraigned the whole impost law, and charged indirectly the whole Congress with a design of oppressing South Carolina.”² He threatened “a dissolution of the Union, with regard to his State, as sure as God was in the firmament.”³

Dissolution
threatened,
1789.

High duties
contested.

From this time down to 1816, although no high tariffs were proposed, nevertheless whenever a proposition was made to increase duties for the purpose of affording protection to particular interests, South Carolina entered her protest. It has already been stated that the State did not oppose duties levied for the sake of revenue. We may go further: in this earlier period the State did not yet take a stand against the principle of protection or deny the constitutionality of its exercise. What she did contest was simply the expediency and justice of levying high duties for the sake of affording full protection to domestic, that is, to Northern, manufacturers. So far was she, in the earlier period, from denying the constitutionality of the principle of protection, that she was willing to allow a moderate application of it by way of compromise, and was not averse to the proposition to protect her own people in their attempt to grow hemp along her coast.⁴ In this respect alone was South Carolina's conduct really inconsistent. In the earlier period, in fact down to 1823,

Attitude
on the
constitutional
question
inconsistent.

¹ *Annals of Cong.*, 1 Cong., 1 sess., 148 (1789-91).

² Maclay, *Sketches of Debate in the First Senate*, 75.

³ *Ibid.*, 77.

⁴ *Annals of Cong.*, 1 Cong., 1 sess., 155 (1789-91).

her representatives in Congress based their objections to the principle of protection only on grounds of expediency and justice, tacitly admitting its constitutionality; whereas, from that time on they vigorously denied the constitutionality of its exercise to any extent whatever.

It may perhaps be objected that the action of South Carolina's leading representatives with reference to the tariff act of 1816 proves that she was not averse, for once at any rate, to high protective duties. On this point several answers might be made. The conditions at that moment were abnormal; the measure was intended to assist in the transition from war to peace; it was not looked upon as the beginning of a system to be perpetuated and extended. But it is a sufficient answer that, at the passage of this measure, South Carolina and her representatives who voted for it parted company. Calhoun himself was severely censured for his part in the struggle; and some of his constituents went so far as to charge that he had sold his State for the Presidency. He himself later admitted that even his friends thought he had gone too far.¹

Did representatives represent?

The dissatisfaction of South Carolina over the action of Calhoun and others in voting for the tariff bill of 1816 was the beginning of the end. It marks the time when South Carolina began to feel that the interests of the South were not identical with those of the North; that the general government was falling into the hands of Northerners, for whose unselfishness there was no guaranty; that, in short, the powers of the government were likely to be stretched more and more along lines not laid down in the Constitution. One form of statement might be that it marks the time when South Carolina erased from her program liberality, breadth of view, and

The turning point.

¹ *Cong. Globe*, 25 Cong., 2 sess., Appendix, 246 (1837-38).

unselfishness, and wrote in their place niggardliness, narrowness, and selfishness; when she began to turn from union towards separation. From another point of view, it marks the time when, not South Carolina, but the other sections of the country which had secured control of affairs, changed their policy from a broad to a sectional one. From a third and higher standpoint, it marks the time when the less admirable qualities of both sections became conspicuous in a struggle for what each section believed, or appeared to itself to believe, was for its own interest, and also for that of the country at large.

The liberal
period,
1812-17.

There is no questioning the truth that after 1816 South Carolina began to change her attitude towards the policy of the general government, and, in fact, towards the union of the States. For some years a Federalist State, later a supporter of Jefferson, the Commonwealth had heartily indorsed the national administrations of the first quarter century. In fact, the people of the State were only following the leadership of a group of their own young and talented public men, William Lowndes, Langdon Cheves, John C. Calhoun, and David R. Williams. They had entered with enthusiasm into the war of 1812; and Jackson's victory at the end of that war had left them boiling over with nationality. One Fourth of July a year was hardly enough for their ardent patriotism. They were broad-minded, and intolerant of littleness wherever manifested. With Calhoun, they had desired to see the nation pursue an enlarged policy. They were willing to undergo every necessary sacrifice for the sake of the security of the country and the advancement of the national interests. "The gradual increase of the navy, a moderate military establishment, properly organized and instructed, a system of fortifications for the defence of the coast, a restoration of specie currency, a due protection of those manufactures which had taken root during the period

Calhoun's
breadth.

of war and restriction, and finally a system of connecting the various portions of the country by a judicious system of internal improvement,"¹ — such were the measures which Calhoun could assert he had advocated down to the year 1817, not doubting the disposition of his constituents to uphold him. They applauded his declaration that the Union ought to be free from external danger and internal difficulty;² that the liberty and union of the country were inseparably connected; that disunion comprehended the sum of political dangers.³ They felt with him that the rulers of America had been charged by Providence, not only with the happiness of a great and rising people, but, in a considerable degree, with that of the human race.⁴

Liberty and
Union
inseparable.

When we consider South Carolina's attitude during the period down to 1817, and in fact to 1824, on the more general subject of the interpretation of the Constitution, we shall find the most striking confirmation of what has just been said as to her broad spirit. The State countenanced a very liberal exercise of implied powers; not only did she support measures which rested upon the doctrine of implication, but she also, through her representatives, championed the exercise of such powers in utterances of remarkable force. In fact, if they had been striving for effect, her most noted representatives could not have employed language that would have contrasted more strikingly with that the same men habitually employed after 1824.

Exercise of
implied
powers
advocated.

It would be difficult to find views more liberal than those expressed by Eldred Simkins in 1818.⁵ He had

Eldred
Simkins.

¹ Calhoun at Abbeville, May 27, 1825, *Niles Register*, XXVIII. 266.

² *Annals of Cong.*, 14 Cong., 1 sess., 729 (1815-16).

³ *Ibid.*, 1335-36.

⁴ *Ibid.*, 839.

⁵ McDuffie's law partner, whom McDuffie was to succeed a few years later.

no fears of a vague, indefinite assumption of powers, and least of all was he afraid of "a consolidation of state sovereignties, or a destruction of state rights, by men coming from and identified with the people of the States. This alarm of state rights has been gotten up and encouraged by gentlemen most strangely. It would really seem that both the State and the general governments were not the governments of the same people, identified by the same interests. . . . Such strict construction would launch us into an ocean of uncertainties, and would fritter away all the Constitution worth preserving."¹ McDuffie expressed himself not less admirably several years later. His remarks are, in themselves, well worth quoting at length; and they are especially striking in view of the action of the South Carolina legislature the next year after his utterance. As late as February, 1824, we find him saying: —

"To lay it down as a general rule, that all municipal powers, not expressly granted to the general government, belong to the State governments, either renders nugatory most of the powers of this government, or it does not advance us a single step towards the decision of the question we are discussing.

"From this we are brought to the obvious conclusion, that the convention did not regard the State governments as sentinels upon the watchtowers of freedom, or in any respect more worthy of confidence than the general government. . . .

"In determining whether a given subject of legislation should belong to Congress or to the State Legislature, the inquiry before the convention was, not which of these will be most likely to abuse the trust, but to which of them does it appropriately belong in reference both to their organization and to the great objects they

George
McDuffie,
1824.

¹ *Annals of Cong.*, 15 Cong., 1 sess., 1920, 1921 (1817-18).

were designed to accomplish. . . . In this view of the subject, I would lay it down as a general rule that all those subjects of legislation which concern the general interest of the whole union, which have a plain and obvious relation to the powers expressly granted, and which a single State government cannot regulate, naturally belong to the general government, unless it can be shown that the regulation of these subjects by Congress impairs the powers of the State legislatures to regulate their own internal police. . . . But, sir, in giving a construction to a power of this description ["To establish post roads"], we must ascend to much higher principles than either law-books or lexicons can furnish. . . .

Implied
powers.

McDuffie's
"higher
principles

"Driven, then, from the ground of precise constitutional investigation, gentlemen have conjured up a phantom which they denominate Consolidation, and which I shall now endeavor to exorcise. . . . If they mean by it a firm and indissoluble union of the States, I, for one, am decidedly in favor of it; but if they mean by it the annihilation of the State governments, or the destruction of a single power that appropriately belongs to them, there is no man who disapproves of it more, and, I will add, who fears it less than I do." ¹

What was the attitude of the man who later came to be recognized as the leader and champion of the State Rights party? How did John C. Calhoun stand on the fundamental questions of constitutional interpretation and of protection?

Calhoun,
1817.

On the question of constitutional interpretation Calhoun had expressed himself superbly in 1817: "He was no advocate for refined arguments on the Constitution. The instrument was not intended as a thesis

¹ McDuffie's Speech in 1824, *Annals of Cong.*, 18 Cong., 1 sess., 1372-1385 (1823-24).

for the logician to exercise his ingenuity on. It ought to be construed with plain good sense. . . . If the framers had intended to limit the use of money to the powers afterwards enumerated and defined, nothing could be more easy than to have expressed it plainly. Our laws are full of instances of money appropriated without reference to enumerated powers." It is quite true that he said the Constitution was founded on positive and written principles, not on precedent, but still he introduced instances, such as the Louisiana purchase, "to prove the uniform sense of Congress and the country (for they had not been objected to) as to our powers; and surely, said he, they furnished better evidence of the true interpretation of the Constitution than the most refined and subtle arguments."¹

Calhoun,
1812-20.

On the question of protection Calhoun declared himself repeatedly, in the years from 1812 to 1820. That he did ably, pointedly, and repeatedly advocate governmental aid for the manufacturing interests is as useless for later generations to undertake to deny as it was for himself. In vain did he contend, in 1833, that his remarks on the tariff measure were impromptu; that his expressions were unguarded; and that the tariff then proposed was purely a revenue measure.² He had committed himself to the principle of protection as early as 1814, to the extent of saying that "moderate but permanent protection" was "the great requisite to the due encouragement" of certain manufacturing interests,³ and that "he hoped to see manufactories encouraged by appropriate duties and had no idea of their being left without such protection."⁴ Again, in January, 1816, speak-

¹ *Annals of Cong.*, 14 Cong., 2 sess., 855-56 (1816-17).

² *Ibid.*, 22 Cong., 2 sess., 525 (1832-33).

³ *Ibid.*, 13 Cong., 2 sess., 1990 (1813-14).

⁴ *Ibid.*, 1984.

ing on the general revenue policy which he wished to see Congress adopt, he advocated governmental interference, and distinctly repudiated "laissez faire" in the following words: "The question relating to manufactures must not depend on the abstract principle that industry left to pursue its own course will find in its own interest all the encouragement that is necessary. I lay the claims of the manufacturers entirely out of view; . . . but on general principles . . . a certain encouragement should be extended at least to our woollen and cotton manufactures."¹ The subject, he contended in a later speech, was connected with the safety of the country. Security, he argued, depends on the means of the country, and the means depend on the moneyed resources. Further, war would cut off agriculture and commerce from manufacturers. It was to be hoped that Congress would adopt a far-sighted policy.² All this was but a part of the broad policy which Calhoun, as has been pointed out,³ was, during this period, urging Congress to pursue. He wished to see the government act on an enlarged policy, take advantage of experience, and add to its reputation.

"Encouragement to manufacturing factories."

It was in this period that John Quincy Adams came in contact with Calhoun, and found him a model. "Calhoun is a man of fair and candid mind, of honorable principles, of clear and quick understanding, of cool self-possession, of enlarged philosophical views, and of ardent patriotism. He is above all sectional and factional prejudices more than any other statesman of this Union with whom I ever acted."⁴ "Calhoun has no petty scruples about constructive powers and state

John Quincy Adams on Calhoun.

¹ *Annals of Cong.*, 14 Cong., 1 sess., 837 (1815-16).

² *Ibid.*, 1330 (1815-16).

³ See above, pp. 6-7.

⁴ John Quincy Adams, *Memoirs*, V. 361.

rights. His opinions are, at least, consistent.”¹ Such was Calhoun down to 1822.

Calhoun,
1831.

What a different picture Adams draws of him in 1831! Writing then, he says that during the early part of Monroe’s administration Calhoun pursued a course “from which I anticipated that he would prove . . . a blessing to his country. I have been deeply disappointed in him, and now expect nothing from him but evil.”² It is not at all necessary to accept this statement entirely as Adams intended it. It is quoted simply to show how, to a man who began political life as a warm admirer, Calhoun appeared to change. Adams could only with great difficulty recognize the broad patriotic statesman of 1817 in the Senator who was well on towards the point where he could proclaim that he appeared, not as the representative of the whole people, but as a representative of one of the States of the Union, sent to watch over its particular interests, and to promote the general welfare so far as was constitutional.³ The Calhoun who advocated protection in 1814 and 1816 was very different from the Calhoun who, in 1833, embodied in formal resolution the proposition that Congress had no power to encourage manufactures, and that it could do no more than levy import duties to execute the inspection laws.⁴ Of course, it does not follow that Calhoun should be censured for advocating the tariff act of 1816, and then turning about and opposing the measures that were offered later. It is not the part of true statesmanship to adhere blindly to a given policy: a statesman will note every alteration in the political and economic situation. Protection in moderation may be beneficial; any further application of the principle may

Calhoun,
1833.

¹ John Quincy Adams, *Memoirs*, VI. 75.

² *Ibid.*, VIII. 411.

³ *Cong. Globe*, 25 Cong., 2 sess., Appendix, 246 (1837-38).

⁴ *Senate Documents*, 22 Cong., 2 sess., I, No. 57 (1832-33)

be harmful. It was open to Calhoun to advocate the tariff bill of 1816 on grounds of expediency, and to oppose that of 1828 on the same grounds; but he could not consistently assume in 1816 that Congress had power to levy protective duties, and then in 1828 utterly deny the existence of such a power. Yet he did do precisely that; and his admirers will hardly succeed in making his conduct at this time appear altogether satisfactory. The truth of the matter seems to be that Calhoun did not foresee what would be the consequences of the policy inaugurated in 1816. He had not felt called upon to define his views, and to hedge them about. It was not politically convenient for him so to do. It was not till after the passage of the tariff act of 1828 that he felt it necessary to define what really were his permanent views.

Calhoun's
inconsistency
on the tariff.

In this connection it may be well to contrast Calhoun's earlier views on the question of slavery with those which he held after his "diligent scrutiny of the Constitution" in 1828, in order to show that his views had changed all along the line. In 1816 it covered him with confusion even to state the fact in Congress that it had been the plain intention of the Constitution to tolerate the slave trade till 1808. "He felt ashamed of such a tolerance, and took a large part of the disgrace, as he represented a part of the Union by whose influence it might be supposed to have been introduced."¹ It was an "odious traffic." Four years later, he was in favor of the Missouri Compromise.² In the thirties, when the abolition struggle was on, we find him regretting that he had not followed the lead of Randolph in the Missouri Compromise struggle. At the time he had regarded Randolph as too uncompromising, but experi-

Calhoun
on slavery.

¹ *Annals of Cong.*, 14 Cong., 1 sess., 531 (1815-16).

² *Cong. Globe*, 25 Cong., 2 sess., Appendix, 70 (1837-38).

ence had taught him his error; and now, in 1837, he would redeem himself by his devotion to an interest he had put in jeopardy in his less experienced days. He would proclaim that slavery, as it actually existed, was a good thing for the white as well as for the black; and that, "in fact, the defence of human liberty against the aggressions of despotic power had been always the most efficient in states where domestic slavery was found to prevail."¹

Calhoun on
Louisiana
purchase.

One more specific instance of the radical change in Calhoun's views may here be conveniently mentioned. Attention has already been called to the argument in which Calhoun cited the Louisiana purchase as a precedent for appropriating money without reference to the enumerated powers.² That reference he introduced, he said, "to prove the uniform sense of Congress and the country . . . as to our powers." "And surely," said he, "they furnish better evidence of the true interpretation of the Constitution than the most refined and subtle arguments." As John Quincy Adams says: "Calhoun thought the case of Louisiana had settled the Constitutional question."³ It is almost impossible to believe that the following sentences, which occurred in the exposition drawn up in 1828 for the committee of the South Carolina Legislature could have been penned by the man who made use of the language quoted above. "In the absence of arguments drawn from the Constitution itself, the advocates of the power [to levy protective duties] have attempted to call in the aid of *precedent*. The Committee will not waste their time in examining instances quoted. If they were strictly in point, they would be entitled to little weight. *Ours is not a government of precedent*; nor can they be admitted,

Precedents
ignored.

¹ *Cong. Debates*, 24 Cong., 2 sess., 719 (1836-37).

² See above, p. 10.

³ John Quincy Adams, *Memoirs*, VI. 72.

except to a very limited extent, and with great caution, in the interpretation of the Constitution, without changing, in time, the entire character of the instrument.”¹ Or, in plainer language, no precedents can have weight which prejudice South Carolina’s case.

One wishes that the South Carolina leaders in this period might have had an opportunity to reach the highest development of their powers, unhampered by the selfish local interests of contending sections. Their natural conceptions were noble and their spirit was admirable; and one feels that they might have accomplished much for the nation. At least, one regrets that they did not have a chance to make the attempt; and that they were crushed by the weight of local interests that pressed down upon them and around them from every side and from every section. One scarcely knows which to regret most, the excessive disregard of general interest which met them, or the lack of moderation which they displayed when they turned to contend against it. It is to the grasping, selfish spirit of a large class of Northern manufacturers and their allies that we must attribute a considerable share of the responsibility for the disagreeable events of the period between 1816 and 1833.

Southern
liberals
subdued.

¹ *Exposition*, in *Works*, VI. 3.

CHAPTER II.

THEORIES OF THE CONSTITUTION IN SOUTH CAROLINA. — 1789-1828.

Theory of the
Constitution
shifting.

Supports
for the
new theory.

THE change in attitude on the tariff and allied subjects, is only one of several evidences that the whole theory of the Constitution was shifting in South Carolina. The process ended in 1828, when the doctrine of nullification was enunciated. To support it, Calhoun and his school appealed to the Federalist; cited the Virginia and Kentucky Resolutions; recalled the proceedings in New England during the war of 1812; pointed to the controversy between Georgia and the general government, not then settled; and, finally, rested upon the understanding that South Carolina had had from the beginning as to the nature of the Union. It will be profitable, therefore, to go over this ground with some care, and to inquire whether any of the authorities or cases appealed to really furnished substantial support for the doctrine. First in order is the Federalist.

The
Federalist.

For a subtle and systematic discussion of the abstract question of sovereignty, of the nature of the Union, and the like, we should look in vain in the Federalist or in any of the early documents. The framers of the Constitution and the advocates of its adoption were engaged in a very practical, common-sense, and extremely urgent undertaking. The existence of the Union itself was at stake. They devoted all their faculties in the first place to devising a plan that would

work, that would establish the Union on a firm basis; and then they bent their energies to the task of securing the adoption of the system they had devised. They did not set out, as Frenchmen do, determined to be logical at every hazard. Therefore, as might be expected, the result of their labors was not a model from a logical point of view. It was, so to speak, a jumble of principles, one here running into another there, a system of checks and balances, a "bundle of compromises"; and therefore any conclusion purporting to be deduced from any single principle would necessarily be only a half truth or no truth at all.

Constitution
not logically
perfect.

While therefore, happily, we do not find in the Federalist the subtle and metaphysical discussions in which some of our public men later revelled, we do find anticipated and discussed almost every constitutional point that vexed our fathers. And there is not one substantial position assumed by Calhoun in his Exposition of 1828 upon which the Federalist does not touch.

Calhoun
anticipated.

Calhoun, as we shall see, took as his fundamental principle the proposition that the States before the Union were sovereigns, — that to the Union the people of the several States acceded as States. From this he evolved the doctrine of nullification and secession. It is no easy task to keep track of the meaning of the words "sovereign" and "sovereignty" in the writings of our statesmen present or past; but it is not difficult to ascertain that Madison and Hamilton, when they spoke of the "sovereignty of the States" in 1787, did not mean by the expression what Calhoun meant by it in 1828. A careful reading of the Federalist, a rational comparison of its various parts, reveals as to essential matters a consistent body of principles in support of the proposition that the States were not, when the Constitution was framed, and had never been, separate and

Calhoun's
doctrine of
sovereignty.

Federalist on
sovereignty.

Madison on
Sovereignty.

independent sovereigns.¹ There would be little disposition to question the correctness of this statement so far as Jay and Hamilton are concerned. If, however, confirmation were wanted as to Madison's view, it would be necessary only to refer to his expressions in the Constitutional Convention itself. Language could scarcely be more explicit. "Some contend that the States are sovereign, when in fact they are only political societies. There is a gradation of power in all societies, from the lowest corporation to the highest sovereign. The States never possessed the essential rights of sovereigns. These were always vested in Congress. Their voting as States in Congress is no evidence of sovereignty. The State of Maryland voted by counties. Did this make the counties sovereign? The States, at present, are only great corporations, having the power of making by-laws, and these are effective only if they are not contradictory to the general Confederation. The States ought to be placed under the control of the general government,—at least as much so as they formerly were under the King and British Parliament."² Madison, with Jay and Hamilton, contended that even under the Confederation a Union existed which could exercise powers that no State could constitutionally question, which no State could legally obstruct, a Union whose bonds no State could legally throw off.³ The authors of the *Federalist* speak not of establishing a union, but of preserving the Union, and of the evils that would result from its dismemberment.

But, while Jay, Hamilton, and Madison denied the individual sovereignty of the States under the Confed-

¹ *Federalist* ("25th edition" in Lodge's edition of *Works of Alexander Hamilton*, IX.), Nos. ii. 8; vii. 33; xiii. 74; xiv. 81, 82; xxii. 128, 135; xxx. 175, 176.

² Elliot's *Debates*, I. 461, 462, June 29, 1787.

³ See below, p. 21.

eration, and that any State could secede, and were aware that the nature of the Union could legally be changed only by the consent of every member in it; yet they were engaged in advocating a plan which proposed radical alterations, and which was to go into operation when only nine of the members had assented. At this point, although these writers labored hard, they did not succeed in disguising the fact that the action proposed and taken was revolutionary. They stated that, in order to make the matter appear as equitable as possible, and also for reasons of convenience, it had been determined that each State was to exercise its free will in the matter of ratifying the Constitution; that it was decided to consider each State, at the time of ratification, "as a sovereign body, independent of all others, and only to be bound by its own voluntary act."¹ The instrument adopted, the States would of course be subordinated to the general government to a greater extent than before; but still an indistinct portion of the supremacy over all persons and things would be reserved to the States, and, in the powers reserved, the States would be "no more subject . . . to the general authority than the general authority," in its delegated powers, would be subject to them.² In a sphere somewhat indefinite, each State would be a legal sovereign exercising certain reserved powers; in another sphere equally undefined, the general government would be a legal sovereign, exercising certain delegated powers, with power through

Federalist on
Adoption
of the
Constitution

Federalist
on division of
powers.

¹ *Federalist*, xxxix. 236. That Madison would have attached to the method by which the Constitution was ratified the significance that Calhoun gave it, is negatived by the spirit of all Madison's writings. Madison would probably have raised no objection to the language used by Chief Justice Marshall in *McCulloch v. Maryland* in speaking on this very point. See Curtis, *Decisions of the United States Supreme Court*, IV., pp. 419-20.

² *Federalist*, Nos. xxxii. 186; xxxix. 238, 239; xlv. 286, 287.

Supreme
Court the
arbiter.

the Supreme Court to pass on cases of conflict. That Madison undoubtedly had in mind the very question of the division of powers, as referred to by Calhoun in his Exposition and elsewhere, is made evident in a passage where he speaks of "controversies relating to the boundary between the two jurisdictions." And it is worthy of note that the Supreme Court is designated as the tribunal which should settle such controversies.¹

Federalist *vs.*
Calhoun.

Not only do we find such general principles as the foregoing plainly expressed or clearly implied in the Federalist; but we also find specific expressions on the particular points that Calhoun emphasized, and we find that these expressions are diametrically opposed to Calhoun's positions. For instance, in a spirit directly contrary to Calhoun's first inference from his fundamental principles that there was no immediate connection between the individual citizen and the general government, we find Hamilton writing: "The great and radical vice in the construction of the existing Confederation is in the principle of legislation for states or governments, in their corporate capacities, and as contradistinguished from the individuals." And again: "We must extend the authority of the Union to the persons of the citizens,—the only proper objects of government."² That this principle prevailed in the Constitutional Convention it is needless to argue. But the authors of the Federalist went further; they considered fully the questions as to what remedies might be adopted in case the general government should exercise powers that might be thought unwarranted.

Individuals.

Remedies
for federal
aggressions.

Their conclusions were about as follows. In the first place, appeal should be made to the Supreme Court, which was to be considered the bulwark of the Constitution.³ "In the last resort, a remedy must be

¹ *Federalist*, No. xxxix. 238.

² *Ibid.*, No. xv. 86-88.

³ *Ibid.*, Nos. xxxix. 238; xlv. 282; lxxix. 284-287.

obtained from the people, who can, by the election of more faithful representatives, annul the acts of the usurpers." ¹ There was a further remedy suggested, which is exceedingly interesting because it is in substance what Madison suggested to Virginia in 1798. Encroachments of the federal government, he wrote in the *Federalist*, would not excite the opposition of a single State or of a few States. "They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be organized. One spirit would animate and conduct the whole." ² Unless the innovations should be renounced, there would be an appeal to force. But the federal government could not go to such a degree of madness. It would be folly for a few representatives to oppose the people themselves.

"Interposition" suggested.

These were all the remedies suggested. But there was one which was pointedly rejected, and that was the interference of particular States. ³ There is a passage which has a very marked bearing on the question of secession. Hamilton had just referred to the gross "heresy" that a party to a compact could revoke that compact, a doctrine which, in a discussion relating to the Confederation, had found some respectable advocates. "The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of the American empire ought to rest on the solid basis of *the consent of the people*." ⁴

Secession rejected as a remedy.

Thus it appears, from a fair examination of the *Federalist*, that Calhoun's doctrine must look elsewhere for support. What now of the Virginia and Kentucky

Virginia and Kentucky Resolutions.

¹ *Federalist*, No. xlv. 283.

³ *Ibid.*, No. xvi. 96.

² *Ibid.*, No. xlvi. 295-297.

⁴ *Ibid.*, No. xxii. 135.

Doctrine
of '98.

Resolutions? It was upon these documents that the South Carolina leaders mainly relied. They were content so long as they had "the good old Republican doctrine of '98" to stand on. The sentiments and the very language of the documents were freely appropriated by those who drafted the nullification reports and resolutions.

Remedies
proposed.

In general, the two sets of resolutions, that of Virginia and that of Kentucky, are substantially the same, at least in spirit. They give the same account of the origin and nature of the general government, declaring that, by compact under the title of the Constitution of the United States, the *States* created a general government with definite powers for special purposes; that to this compact each State acceded as a State; and that the government created by this compact was not made the final judge as to the extent of its powers. Just at this point a slight difference between the two sets arises. In pointing out the final judge of controversies between the two jurisdictions, the State and the Federal, the Virginia Resolutions declare that "In case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the *States* who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them"; while the Kentucky Resolutions set forth that, "As in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."¹ Madison, in the Virginia Resolutions, followed strictly the line he

¹ For the Resolutions and an account of them, see E. D. Warfield, *The Kentucky Resolutions of 1798: An Historical Study*. 1887.

had laid down in the Federalist; ¹ the Kentucky Resolutions, following Jefferson's lead, seem to go further.

The sentence just quoted from them was made to do very effective work by the nullifiers. In fact, it was very much overworked. It appears that the expression is not in harmony with the general spirit of the resolutions; it certainly is scarcely in keeping with the particular course that was pursued at the time. Kentucky merely declared that the construction which the general government had applied to certain articles of the Constitution was unwarranted and dangerous; that the proceedings of the government under color of those articles should be reserved for correction at a time of greater tranquility; that certain statutes, among them the Alien and Sedition Acts, were null and void; and that the condition of things called for immediate redress. The Governor was therefore authorized to communicate the Resolutions to the Legislatures of the several States; the Senators and Representatives were called upon to present them in their respective Houses; and the co-States were requested to express their sentiments, and to join with Kentucky in securing the repeal of the obnoxious measures at the next session of Congress. Thus did Kentucky bring herself alongside of the Federalist and the Virginia Resolutions. Virginia regretted the tendency of the government to enlarge its powers by forced construction; protested against the Alien and Sedition Laws as infractions of the Constitution; appealed to other States to concur in declaring those laws unconstitutional, and to take the "necessary and proper measures" for co-operating with Virginia "in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people."

Virginia and
Kentucky
misconstrued.

Appeal to
"co-States."

Only the most forced construction could find a warrant in either or both of these sets of resolutions for

¹ See above, p. 21.

No warrant
for Calhoun's
doctrine.

the extreme doctrine to which South Carolina gave her sanction in 1828. Madison himself denied that either Jefferson or himself meant by the proceedings in 1798 what Calhoun and others claimed for them; the course of South Carolina to 1827 indicates that she had the same understanding of the proceedings as Madison had; and in 1832 there were seventeen thousand out of the thirty-nine or forty thousand voters in South Carolina who, notwithstanding the great pressure upon them, denied the validity of Calhoun's construction.

The problems
different.

One would naturally expect the remedy adopted in 1798 to be different from that of 1832. The problems of the two periods were radically different. In 1798 the question before Jefferson and Madison was how to check the measures of the general government which they believed were obnoxious to the great majority of the people, and to all the States. The case before them was one where a few representatives of the people were opposed to the whole people, a case to which Hamilton had directed attention in the *Federalist*. The men of '98 had not recovered from their dread of a monarchy. The course of the government furnished some ground for alarm. Later, in 1832, the question was not how to assure the will of the majority, but how to devise a remedy by which the minority might control the majority and the Union be still preserved. South Carolina's grievance was that the measures of the government did have the support of the majority of the people and the majority of the States. Her position was, not that an oligarchy at the seat of government should not rule, but that the majority should not rule. In the one case, the States could be appealed to with some confidence; in the other, the appeal to the States was a failure.

Georgia's
disobedience.

From the Georgia controversy, South Carolina derived considerable satisfaction; for she was aware that

Georgia had defied the Executive till 1829, when an Executive came in who winked at her misdoings. She noted that Georgia at the next stage of the controversy treated the injunctions of the Supreme Court with open contempt, and was not called to account. Seeing, then, that Jackson, if not disposed to side openly with Georgia, was at least indifferent, she drew the reasonable conclusion that Jackson would scarcely coerce her. She professed to base her resistance upon principles which Georgia had enunciated.¹

Jackson's
connivance.

From the proceedings in New England during the war of 1812, South Carolina could attempt to make capital only with very bad grace; for her legislature had, at the time, pointedly rebuked New England's attitude; and throughout the State, the Hartford Convention had aroused execration, and had been termed a traitorous association.²

Hartford
Convention.

In fact, it is extremely unfortunate for South Carolina that she had to originate, or at least to put into practice, the doctrine of nullification. There was nothing in the past conduct of the State, and little or nothing in the expressions or actions of any of her representatives, to give support to the doctrine. On the contrary, the early history of the State speaks as strongly as possible in condemnation of it. The evidence for this is so striking as to justify extended notice.

South
Carolina's
early history
against
nullification.

Charles Pinckney, Charles Cotesworth Pinckney, John Rutledge, and Pierce Butler were South Carolina's delegates to the Constitutional Convention. Of these, the two Pinckneys and Rutledge were decidedly in favor of establishing a strong national government,

Her
delegates in
Constitutional
Convention.

¹ The encouragement from Georgia's attitude is shown in a speech of Senator Miller of South Carolina, *Cong. Debates*, 22 Cong., 2 sess., 453, 454 (1832-33), and in John Quincy Adams's *Memoirs*, VIII. 262.

² David R. Williams: *Charleston Mercury*, Aug. 27, 1828.

State
sovereignty
condemned.

capable of effectively executing its acts and of dispensing its benefits and protection. The two Pinckneys could scarcely find language sufficiently forcible to express their condemnation of the doctrine that the States were separately and individually sovereign. The delegation, except Charles Pinckney, opposed giving Congress power to negative laws passed by any State contravening the articles of union, but advocated making acts of Congress the supreme law of the land.¹ Charles Pinckney favored the Congressional veto and moved to give Congress power to negative all State laws which Congress should judge proper, grounding his motion on the need of a strong controlling power.² When Randolph, of Virginia, declared that certain resolutions which he introduced were intended, not for a federal, but for a strong national government, in which all idea of States should be nearly annihilated, Charles Pinckney asserted that his principles were the same as Randolph's.³ Such sentiments were not only expressed in the Constitutional Convention, but were also uttered with even more emphasis in the State Legislature itself. Charles Pinckney there expressed his fear that it was almost impossible to provide any government on republican principles sufficiently vigorous to extend its influence to all parts of the country. "The State governments will too naturally slide into an opposition against the general one and be easily induced to consider themselves as rivals."⁴ Charles Cotesworth Pinckney boldly proclaimed that attempts to weaken the Union, by pretending that each State was separately and individually independent, were political heresies which would produce serious distress. "The separate independence and individual sovereignty of the sev-

State
Convention.

¹ Elliot, *Debates*, I. 207.

² *Ibid.*, I. 400.

³ *Ibid.*, I. 391.

⁴ *Ibid.*, IV. 259.

eral States was never thought of by the enlightened band of patriots who framed this Declaration."¹

Coming down to a later date, let us examine the opinion of one of the most eminent men South Carolina has given to the republic. Langdon Cheves, in 1812, was speaking on a bill concerning the militia. To discover the intent of the Constitution on that subject, he felt it necessary to discuss the nature of the government. Is it federal or national? he asked, — a government of the States, or of the people? For the purpose of making war, it was essentially national. The difference between a federal government and a national government might be seen by comparing the present government with the old Confederation. "The last, unlike the former, was not in itself a sovereign." It could make no law immediately binding on the persons and property of the citizens of the several States. The present government can. "This, then, is a definition of a national government or a government of the people. It acts immediately on the person and the property of the citizen, and such, as to the power of declaring and making war, is the nature of the government of the United States."² A considerable difference there is between these sentiments and the later doctrine of Calhoun that there is no direct connection between the citizen and the general government, and that the only connection is through the State, a doctrine which he considered the first inference from the nature of the relations between the States and the general government.³

Langdon
Cheves
against
Calhoun,
1812.

In 1817 Langdon Cheves, then a State judge, was called upon to pass upon the right of the Judiciary to declare an act of the Legislature unconstitutional, and

Cheves on
quashing
statutes.

¹ Elliot, *Debates*, IV. 301.

² *Annals of Cong.*, 12 Cong., 1 sess., 735 (1811-12).

³ *One of the People*, Oct. 1, 1821, in McDuffie's *Essays*.

he made use of the following language: "The co-ordinate authority of the Judiciary and its right and duty to determine where its functions involve the question on the constitutional validity of a legislative act, I take to be a point now settled by the judgment of almost every respectable judicial tribunal, and confirmed by the approbation and acquiescence of all wise and sober statesmen in the Union; but it is still a power to be exercised with great circumspection, and a duty which is incumbent only in very clear cases. On this subject I adopt with entire approbation the language of the Supreme Court of the United States." ¹

George
McDuffie vs.
state sovereignty,
1821.

But the most sweeping denunciation by a South Carolinian of the doctrine of strict construction and of state sovereignty is yet to be mentioned. In 1821, George McDuffie wrote a pamphlet in reply to a Georgia paper which had contended for the soundness of these two doctrines. That pamphlet had the indorsement of Governor Hamilton. The principles enunciated are truly Websterian; the general government is as certainly the government of the whole people as the State is of part of the people; the Constitution was ordained by "the people of the United States"; it was not intended that national officials should be restrained by the lawless resistance of State officials. The central government was as worthy of confidence as that of a State. It was not an object of dread. The State systems tended more to disunion than to consolidation. It has been asserted that, in case of conflict, each party has a right to judge for itself. "No climax of political heresies can be imagined in which this might not claim the most prominent place. To suppose a general government has the right to exercise certain powers, and that each has the right to determine its own relative powers, is to suppose the existence of two contradictory

State not
the arbiter.

¹ *Niles Register*, XII. 248.

and inconsistent rights." This pamphlet was written the year McDuffie and Hamilton took their seats in Congress. Only a few years later we find both these men among the most active in carrying into practice the principles here so strongly condemned.

Even these striking public expressions of well known leaders do not complete the evidence. The representatives of South Carolina on various occasions passed judgment upon the specific question as to whether the State or the Supreme Court was the final judge of the constitutionality of an act of Congress. Their decision was invariably in favor of the Supreme Court, and, so far as public records show, passed without protest from their colleagues or from their constituents. Such opinions were given at different times from 1798 to 1826, by no less distinguished representatives than Robert Goodlow Harper,¹ John Rutledge, Jr., William Lowndes,² and even William Harper, the able exponent of the nullification doctrine. In 1802, John Rutledge, speaking on a measure affecting the Judiciary, ably pointed out its function in our system: the people, he observed, could never have adopted the Constitution had they not regarded the Judiciary as co-ordinate with the Legislative and Executive, and as the check essential to the duration of the government; the State governments revered the Judiciary as the fortress of their safety. So long as it remained, there could not be much permanent oppression. The people through the Constitution had given the Judiciary power to declare unconstitutional laws passed by Congress in defiance of the Constitution. In 1820, William Lowndes remarked that it was foreseen by the framers of the Constitution that a State might attempt to break over the barriers

South
Carolina on
functions of
the Supreme
Court.

Reverence for
the Judiciary.

¹ *Annals of Cong.*, 5 Cong., 2 sess., 1991 (1797-99).

² *Ibid.*, 16 Cong., 2 sess., 515 (1820-21).

of the Constitution. Provision had been made for such a contingency. The Judiciary had been provided to settle such constitutional questions.¹ But even more striking, perhaps, is the declaration of Senator Harper as late as 1826 that the Supreme Court was made by the Constitution the arbiter between the conflicting elements of our complicated system, and that its office was to restrain, not only the powers of the States, but also those of the general government; the Supreme Court was the guarantee of the Constitution.²

South
Carolina
Legislature
national,
1824.

To turn for a moment to the South Carolina Legislature: In December, 1824, the tariff act passed by Congress in the spring of that year was brought to the attention of the Legislature and was referred to a committee of which Judge Prioleau was a member. A statement known as Prioleau's report was brought in; it declared that if the tariff bill was in fact a bill to encourage manufacturers at the expense of agriculture, it would meet with decided disapproval; "but whether the act be or be not unconstitutional, has not been decided by the only proper tribunal, the Federal Judiciary."³ The following very striking resolutions were thereupon adopted.

"Resolved: That the people have conferred no power upon their State Legislature to impugn the Acts of the federal government or the decision of the Supreme Court of the United States.

"Resolved: That any exercise of such a power by this state would be an act of usurpation.

"Resolved: That the Representatives of the people in Congress are only responsible under God to the people themselves."

¹ *Annals of Cong.*, 6 Cong., 2 sess., 932 (1799-1800).

² *Cong. Debates*, 19 Cong., 1 sess., 549 (1825-26).

³ *Five Letters to Gov. Hamilton*. No. 4 in pamphlet in Boston Athenæum (Library No. B. 1065).

It must not be overlooked, that down to 1828 the South Carolina leaders seem to have had a confused conception as to the nature and the seat of sovereignty. The confusion into which Senator Hayne fell in 1830 in his discussion of the origin of the Union has been pointed out by several writers. It will be remembered that he made the general government one of the sovereign parties to the compact. That he did so is not remarkable: it was very common in South Carolina and elsewhere to speak of the sovereign federal government on the one hand, and of the sovereign States on the other. "Sidney," as we shall see,¹ fell into the same confusion in 1828; as did also James Hamilton, in his address to his constituents at Walterborough in October of the same year.² We have even the serious remonstrance of the South Carolina Legislature in 1827, where it is represented to be important that South Carolina should approach the national government as *a sovereign and an equal*. She had not then adopted Calhoun's view that the national government was a mere creature. So far as there was any definite opinion at all, it appears to have been that both the State and the general government were sovereign, each in its own sphere, and that in cases of conflict the Supreme Court was the arbiter.

Confused
conception of
sovereignty.

South
Carolina
"an equal."

The truth is that the question had come to be one that could not be decided by weight of authority. So much Hayne declared in 1829, when he said that his State would never yield to great names when such principles were at stake; and so much McDuffie implied when he asked if it could be supposed that South Carolina could submit to a practical interpretation of the compact by which her interests would

Submission
impossible.

¹ See below, page 75.

² "Let our antagonist be a co-equal Sovereign, and let us meet him on equal grounds."

be sacrificed. One thing was settled: the extreme state rights leaders had determined to make a test of their doctrine, and to ascertain whether their rights could be trampled upon "under the forms of the Constitution, but in direct violation of its spirit."

CHAPTER III.

CAUSES OF NULLIFICATION.

1823-1828.

To the people of South Carolina everything seemed to go wrong after the defeat of Andrew Jackson in 1824. The times appeared to be out of joint: had not the "Adams Dynasty" imposed itself on the country by fraud and corruption? Had it not deviated from the conservative policy of preceding administrations and announced principles that were at variance with the well established rights of the States? "A union of the black-leg and the Puritan," what better could be expected of it? Public sentiment in the State demanded such a change in the electoral machinery as would prevent a recurrence of the surprise of 1824. In no event should Congress be permitted to choose the President. Governor Manning, in his message, December 1, 1826, expressed the opinion that the time was not far distant when it would be found expedient to change the method of electing the President; the House of the State Legislature agreed with him, but deemed it unwise, at the time, to agitate the matter. McDuffie championed this reform both in and out of Congress, to the great satisfaction of his constituents.

Change in
machinery
demanded.

Discontent
over election
of 1824.

To add to the discontent of the South Carolinians came the renewed demands of the protectionists for higher duties, after the slight revulsion of 1825-26. In the session of Congress of 1826-27, the woollen interests, in particular, clamored for aid. A bill was introduced embodying their demands, and would have

Discontent
over the
tariff.

Harrisburg
Convention.

Responsi-
bility for
"Bill of
Abomina-
tions," 1828.

Fighting the
Devil with
fire.

become a law but for the casting vote of the Vice-President, Calhoun. This only intensified the agitation outside of Congress. A national convention was held in Harrisburg in the summer of 1827, which recommended duties on woollens and a number of other commodities, higher even than those of the rejected tariff bill of 1827. The contest was renewed in Congress immediately after it assembled; the struggle that ensued was remarkable.¹ The opponents of protection adopted the principle of "fighting the devil with fire." Their intention was to prepare a dose that even New England could not swallow. But they had not taken the measure of New England's gullet correctly; they did not know the capacity of that section when it came to swallowing tariffs; for the "Bill of Abominations" went down with scarcely a hitch. The over-shrewdness of the low tariff men had resulted in their discomfiture. The tariff bill of 1828 was more hideous to its pretended friends than to its supposed enemies; and the responsibility for many of its most obnoxious features rested as much upon the representatives of South Carolina as upon those of any other State. Thomas R. Mitchell had frankly said that he would vote for retaining the duty on molasses, "because he believed that keeping it in the bill would get voters against the final passage of the bill; and if the bill must pass, he wished the poor to be made to feel its oppressive operations, that a stronger interest might be created in the country against the tariff system."² McDuffie, in 1844, gave the same explanation of his action and that of his colleagues.³ But, in spite of the

¹ See Taussig, *Tariff History of the United States*, 86-101.

² *Cong. Debates*, 20 Cong., 1 sess., 2344 (1827-28).

³ "We saw that this system of protection was about to assume gigantic proportions, and to devour the Substance of the Country, and we determined to put such ingredients in the chalice as would

tactics of the Democrats, in spite of the protests of the South Carolina Legislature, in spite of memorials from nearly every district in the State, and in spite of the remonstrances and the threats of the representatives from South Carolina, the "bill of abominations" became a law.

The passage of this measure convinced South Carolina that it was time to clear the deck for action. It only confirmed the convictions of those who had given warning of danger, and, as will be shown further on,¹ it impelled Calhoun to cast in his lot with his former opponents. To understand the conduct of the people of South Carolina from this time forward, it will be necessary to endeavor to enter into their state of mind, to ascertain their grievances more clearly, and to take cognizance of their apprehensions. For this purpose, we cannot do better than to make an examination of the impassioned arguments of George McDuffie in Congress; and, later, of the torrent of denunciation, warning, exhortation, and appeal that Robert J. Turnbull poured out, in 1827, in "The Crisis." For a fair presentation of McDuffie's views, we must not confine ourselves to any particular speech, but look rather at his whole course through the debates on the tariff bill of 1824,

Grievance
stated

poison the monster and commend it to his own lips. This is what is sometimes called 'fighting the devil with fire,' a policy which, though I did not altogether approve, I adopted in deference to the opinions of those with whom I acted." *Cong. Globe*, 28 Cong., 1 sess., Appendix, 747 (1843-44). These tactics were not entirely novel. In 1789, Tucker, of South Carolina, said: "I could not answer for my conduct if I did not agree to a heavy tax on the Eastern states, when I found the Southern states taxed in that proportion. If the gentlemen from Massachusetts think the duty on molasses bears too heavy on their state, they may remedy the evil by agreeing to a general reduction." — *Annals of Cong.*, 1 Cong., 1 sess., 293 (1789-91).

¹ See below, p. 63.

the woollens measure of 1827, the struggle of 1828, and even through the debates of 1830.

George
McDuffie.

McDuffie was well fitted for the part he had to play. A suspicion that any injustice was intended against his people was sufficient to set his soul on fire. And the conviction was gradually gaining strength with him that he was breathing an atmosphere of injustice. Few men of his time equalled him in ability to persuade the masses. Clear-headed, pure-hearted, frank, bold, determined, he had passionate convictions, was not afraid to utter them or to act in accordance with them. He could not stop half way, and was perhaps too uncompromising. He rejected as a "perfect solecism" Calhoun's contention that a State could nullify an act of Congress by virtue of any power derived from the Constitution. He placed the right on higher ground, on the mere fact of the sovereignty of the State; in fact, he accepted the doctrine of nullification at all only because he could not reasonably hope for a more effective measure. It would seem that he was willing to rest the case of the State upon the bare right of revolution. In 1833 he was opposed to accepting the Clay Compromise, but yielded in deference to the great majority of his colleagues.

McDuffie as
an orator.

McDuffie was the most sensational orator of his time. When it was known that he was going to speak on the floor of Congress, the galleries usually filled at an early hour. He was a bitter opponent of the Adams administration; and against it and its defenders he hurled denunciation and vituperation day after day. Josiah Quincy gives us a picture of him in action at this time: "McDuffie was certainly an orator, if earnestness and fluency can make one. His effort, and it may well be so called, for he gesticulates all over, lasted the greater part of two days, and was always lively, if never conclusive. He was not guilty of sawing the air with his

hands after the manner which Hamlet deprecates, for he preferred to pound that element with tightly clenched fists. 'Will not those fists of McDuffie's fly off and hit somebody?' whispered Miss Helen to me during one of the tempests, or, as I may say, whirlwinds of passion."¹ The "over-emphasis" of this "high-talking Southerner" was too much for the proper taste of the cold and phlegmatic New Englander. It is to be regretted that so little is known about McDuffie's character and career outside of the halls of Congress. "He was a spare, grim looking man, who was an admirer of Milton and who was never known to jest or smile."² He was taciturn, reserved, seemed to commune with himself; yet he was a man of strong feeling, and was easily affected. A visit with an old schoolmate to the scenes of his school days could soften his stern expression and move him to tears.

McDuffie's
ardor.

McDuffie entered Congress in 1821,³ succeeding his

¹ Quincy, *Figures of the Past*, 283.

² Ben Perley Poore, *Perley's Reminiscences*, I. 81.

³ Since there is no formal biography of McDuffie, a few notes may here be presented. McDuffie is said to have been born in Columbia County, Georgia, about 1788. For a while he clerked in the store of James Calhoun, in Augusta. We next find him at William Calhoun's, in Abbeville County, South Carolina, where he had been taken to board, so that he might attend the famous Waddell School at Wilmington. At this school he was a noted boy, and in after years was remembered as one of its lights. In December, 1811, he entered the Junior Class at the South Carolina College, where he was acknowledged to be first. He graduated in 1812 with first honors, his graduating speech, as fate would have it, being on the "Permanence of the Union." Admitted to the bar in 1814, he settled in Pendleton, became a candidate for Solicitor, was defeated, and then settled down to practice with Colonel Simkins, of Edgefield. With him he entered into a large practice, had access to a fine library, and had an opportunity to mingle in the very best society. His rise was rapid. In 1818 he was elected to the State Legislature, serving his term in the Lower House as one of its very conspicuous members. In 1821 he began his career in

Sketch of
McDuffie.

McDuffie's
principles.

friend and law partner, Colonel Eldred Simkins. He began his career thoroughly imbued with the liberal principles of the Calhoun school. To the end he maintained a modern attitude on certain questions, and was driven from his high ground only by the unwise aggression of the protectionists and the blind attacks of the abolitionists.

McDuffie on
protection.

It is not necessary that we should follow McDuffie, or any of the other South Carolina representatives, through those parts of their arguments in which they vigorously and ably attacked the protective system on general economic grounds. We are concerned only with those passages that deal with the particular grievances of South Carolina and indicate the state of mind of the people. Government, said McDuffie, could not exist upon a system of taxation which perverted the powers granted for national objects to the oppression of one part of the Union for the benefit of another. He warned Congress that his constituents could not be expected to remain calm spectators of a ceremony by which their agricultural and commercial interests were sacrificed to Boston monopolies. If the councils of the country were ever to be distracted, they would be dis-

Congress, serving his State ably till 1834, when he became Governor. From 1836 to 1842 he was in retirement, but came out in the latter year to enter the United States Senate. In 1846 his health failed. He resigned, and till 1851 was little more than a dying man. A duel with Colonel Cummings, of Georgia, about 1822, resulted in a spinal wound which affected McDuffie's health, and probably materially altered his disposition. He is said to have shown no irritability up to the time when he was wounded. The duel was brought on by a dispute arising out of the rivalry between Crawford and Calhoun for the Presidency, but the indiscretion of friends of both parties was largely responsible. In 1829 McDuffie married a member of a wealthy family, a daughter of Colonel Richard Singleton. McDuffie's daughter was married to Colonel Wade Hampton. O'Neill, *Bench and Bar of South Carolina*, II. 463-468.

tracted by measures of that description. All the sordid and mercenary principles of human nature unavoidably mingled in such discussions. "In the very nature of things, it must be a conflict into which no sentiment of patriotism can enter; a conflict between a self-interested majority on the one hand, attempting to disguise under the pretence of some public and patriotic motive the true character of the measure; and of an oppressed minority on the other, equally outraged by the injuries inflicted and the mockery of flimsy pretences by which their understandings are insulted. Such a contest has all the elements of settled hostility and permanent alienation of feeling without anything to soothe the angry passions it necessarily brings into action."¹

Mercenary
principles.

To illustrate the operation of the tariff, McDuffie elaborated his famous "export tax" or "40 bale" theory, maintaining that an import duty imposed upon articles of foreign merchandise, received in exchange for the domestic produce of the planting States, was precisely equivalent — our commercial relations being what they then were — to an export duty levied upon the products of those States.²

The export
tax theory.

It would be tedious to follow McDuffie through the elaborate and ingenious argument in which he undertook to sustain his proposition. He advanced it first in 1830, but found later that he had left out a very important consideration, and so in 1832 he returned to the task and perfected his theory.³ We need notice here only his conclusion that the actual operation of the protective system, stripped of all disguises, was such as to raise the entire amount of the federal taxes upon one fifth of the products of the Union, and to leave four

¹ *Congressional Debates*, 19 Cong., 2 sess., 1007 (1826-27).

² *Ibid.*, 21 Cong., 1 sess., 844 (1829-30).

³ *Ibid.*, 843-847, 3142-3150.

fifths exempt. How much truth there was in the theory will be a matter for discussion later. It is sufficient here to note that it obtained very wide acceptance in South Carolina.

The South
oppressed.

Having thus demonstrated the truth of his proposition to his own satisfaction, and to that of many of his constituents, McDuffie proceeded next to argue that there could be no protection against such injustice through ordinary legislative channels. It was clear to his mind that, owing to the extent of the country, there were two great interests which were diametrically and irreconcilably opposed to each other: the manufacturing interest of the North, which could not hold its own against foreign competition without the aid of bounties; and the agricultural interest of the South, which could buy and sell more satisfactorily in foreign markets. That power should be lodged with one to deal with the other as it saw fit, he held unjust. And was it not patent to all that such was the case? It was of no consequence that the South had fifty or sixty representatives in Congress out of two hundred and thirteen, for those who passed protective measures had no sympathy for cotton growers. "What nonsense would it be to talk of representative responsibility when those who destroy our prosperity believe it to be their interest and their right and duty to destroy that prosperity! If, sir, as the advocates of this tariff allege, it is the interest of two thirds of this Union to destroy the prosperity of the other third, . . . would it be possible for the other third to submit to a practical interpretation of the compact of the Union, by which the right of the two thirds would be recognized to destroy the other?"¹ The South had no security against taxation but the will of those who had a settled interest in increasing its burdens. There could be no more insulting mockery than to tell his constituents that

The South
cannot
submit.

¹ *Congressional Debates*, 20 Cong., 1 sess., 2404 (1827-28).

they were secured by the principle of representative responsibility, when the men who made the laws were responsible only to those who were clamoring for higher impositions. The people of the South could not manufacture; all their habits disqualify them for the business. They could not rival the manufactories of Europe or of the North.¹ Continue the system, and his State would be ruined. They could not resort to other employments. Could it be expected that they would abandon their lands, free their slaves, and seek their fortunes in other lands? "No, sir, our citizens would sooner perish than be thus driven from their rightful inheritances and the homes of their fathers by this unrighteous system of oppression."²

The South
shackled.

To the objection that the majority must govern, McDuffie ingeniously replied that the principle was true where it applied, but that it was subject to two limitations. The first limitation was the Constitution; that charter was founded upon the conviction that an unchecked majority was as dangerous as an unchecked minority. In the second place, the right of a majority to govern, in a political system composed of confederated sovereigns and extended sections having different

Minority rule
advocated.

¹ This was uttered in 1830. In 1828 he had threatened the protectionists with the prospect of the South's changing its whole economy, and becoming the rival of the North. The South, he said, would be driven to make the experiment of manufacturing with slave labor. Slave labor could manage the ordinary operations of machinery better than Northern labor. Nothing but an experiment was needed to prove that the South could drive the North out of its own market, at least. By 1830 McDuffie had examined the subject more closely, and had discovered that slavery would prevent an experiment being made. This change affords a striking illustration of that unsteadiness of McDuffie's mind to which Josiah Quincy alluded. — *Congressional Debates*, 20 Cong., 1 sess., 2400 (1827-28).

² *Ibid.*, 21 Cong., 1 sess., 845 (1829-30).

Protest
against the
majority
principle.

interests, was limited to cases where interests were common. McDuffie seems to have been unconscious that he was assuming a great deal in stating that our political system was a confederation of sovereigns; nor did he appear to himself to be absurd in claiming for the minority a right which could not safely be intrusted to the majority. In denying to the majority the right to govern, he was only following in the footsteps of Calhoun, who had elaborated the doctrine of minority rule in the Exposition of 1828, and of Senator William Smith, who was especially emphatic on the subject in his remarks on presenting South Carolina's protest in 1829. "I, as Senator from South Carolina, announce to you that South Carolina can never consent to that doctrine, to that dangerous principle, that a majority shall rule. If a majority is to rule, away with your Constitution at once. All governments have fundamental principles, and so far as those of this government are correct South Carolina agrees with them, but she protests against the principle that a majority shall rule."¹

Comparison
with the
Colonies.

The Southern States, McDuffie concluded, were in very much the same relation to the North as the Colonies were to Great Britain, the difference being that the tribute exacted from the South for the benefit of the North amounted to more in a single year than all the impositions placed upon the Colonies from the time of the Stamp Act to the breaking out of the Revolution.² Oppression had been carried to an extremity. South Carolina understood her position, and would maintain it regardless of consequences.

Truly, if the foregoing representations were correct, if McDuffie's conclusions were sound, then the people of South Carolina would have been justified in

¹ *Congressional Debates*, 20 Cong., 2 sess., 55 (1828-29).

² *Ibid.*, 21 Cong., 1 sess., 859 (1829-30).

resorting, not only to every constitutional means of resistance, but also at once to the right of revolution, which belongs to every people suffering intolerable oppression. But, unfortunately for South Carolina, McDuffie was not infallible. His export tax theory was skilfully constructed, and was in the main quite sound; but it had no application to the period in question. The weak point in his position is that the trade relations were not such as he assumed; and this breaks the force of his argument. He assumed that the United States was exporting more than it was importing; that consequently specie was flowing in; that prices were falling abroad and rising at home: but this assumption was not warranted by the facts. The report of the Secretary of the Treasury shows that, during the period in question, (from 1821 to 1833, inclusive,) the total value of all imports, exclusive of specie and bullion, was \$1,039,000,000; and of all exports, exclusive of specie and bullion, \$933,200,000; leaving a balance on the side of imports of \$105,800,000. During the same period, the imports of specie and bullion were \$89,000,000, and the exports were \$98,600,000, leaving an excess of specie exports of \$8,800,000.¹ The facts were against McDuffie's contention; the conditions were such as to cause a rise of prices abroad and a fall at home, and not a rise at home and a fall abroad. It was not till after 1833, and then for only a few years, that there was any considerable excess of imports of specie and bullion over exports.

McDuffie's
fallacy.

Cotton was, of course, the commodity the price of which McDuffie had particularly in mind; and he pointed to the considerable decline in the price of that product through 1821-33, as an illustration of his point. Undoubtedly, the fall in the price of cotton during

King Cotton

¹ *Report of the Secretary of the Treasury*, 1854-55, pp. 105, 109, 113.

Price of
cotton.

that period was very great; but a mere glance at the statistics reveals the secret. In 1821 the production of cotton in the United States was 124,900,000 pounds, and the average price was $16\frac{1}{5}$ cents; in 1832 the production was 322,200,000 pounds, and the average price was $9\frac{4}{5}$ cents. The production had more than doubled; the price had fallen considerably less than one half. In 1823 the production was 173,700,000 pounds, and the average price was $11\frac{4}{5}$ cents; in the following year the production was 142,000,000 pounds, and the average price was $15\frac{2}{5}$ cents.¹ McDuffie does not appear to have been impressed with the relation between the price and the supply. No time need be wasted in arguing that in that relation is the true explanation of the fall in price which gave him so much concern.

Influence
of the tariff
exaggerated.

It would seem, therefore, that the statesman and his followers very greatly exaggerated the influence of the tariff; and it is said that McDuffie, towards the close of the controversy, admitted that he had been led too far.

¹ *Report of the Secretary of the Treasury*, 1855-56, p. 116. The following figures may be interesting: —

Year.	Millions of Pounds.	Average Price in Cents.	Value in Millions.	Year.	Millions of Pounds.	Average Price in Cents.	Value in Millions.
1821	124,9	16.2	20,0	1838	595,9	10.3	61,5
1822	144,7	16.6	24,0	1839	413,6	14.8	61,2
1823	173,7	11.8	20,4	1840	743,9	8.5	63,9
1824	142,0	15.4	21,9	1841	530,0	10.2	54,3
1825	176,4	20.9	36,8	1842	584,7	8.1	47,6
1826	204,5	12.2	25,0	1843	792,0	6.2	49,1
1827	294,3	10.0	29,0	1844	663,6	8.1	54,1
1828	210,6	10.7	22,4	1845	872,9	5.9	51,7
1829	264,8	10.0	26,6	1846	547,5	7.8	42,7
1830	298,5	9.9	29,7	1847	527,0	10.3	53,4
1831	276,9	9.1	25,3	1848	814,0	7.6	61,9
1832	322,2	9.8	31,7	1849	1026,6	6.4	66,4
1833	324,7	11.1	36,2	1850	635,4	11.3	71,9
1834	384,7	12.8	49,4	1851	927,2	12.1	112,3
1835	387,3	16.8	64,9	1852	1093,2	8.0	87,9
1836	423,6	16.8	71,3	1853	1111,6	9.8	109,4
1837	444,0	14.2	63,0	1854	987,8	9.4	93,6

Still South Carolina undoubtedly had some cause for complaint. It can scarcely be maintained that the State received any benefit from a high tariff: she had no manufactured products to protect, and was not likely to have any so long as she fought against any change in her social and political system. With slavery, manufacturing on any considerable scale was impossible. A community which, a few years later, had to be rebuked by its Governor for unreasoning prejudice against the mercantile class, and which at the same time was urged not to send its young men North to imbibe false notions with respect to the "peculiar institution," was scarcely one which was likely to catch the manufacturing craze. Since, therefore, the State could not manufacture, it was natural that she should object to commercial restrictions merely that another section might prosper; it was natural for her to contend that she should be allowed to buy and sell where she pleased.

The South
injured by
high duties.

Furthermore, South Carolina undoubtedly had a right to complain of the selfishness and the overbearing disposition of the majority. That majority was sectional; and South Carolina felt that there was very little likelihood that it would ever take a broad, patriotic view of affairs, or that it could be held in check by any ordinary means. The State, therefore, became violently irritated and lost her head. This was extremely unfortunate; for, by this time, there were signs that the excesses of the majority would lead to a reaction throughout the country. The State should have possessed her soul in patience. But a disposition to possess her soul in patience has never been considered the most striking characteristic of South Carolina; and it was not likely to seize her when she saw herself steadily falling behind other States, both industrially and politically. Falling behind she undoubtedly was, not, as has just been pointed out,¹

Conduct of
the majority
irritating.

¹ See above.

Decline of
South
Carolina.

from the effects of the tariff, but from deeper causes that must now be indicated.

That South Carolina was on the decline, or at least that she was not advancing, was a fact noticed by nearly all thoughtful men in the State. The accomplished scholar and jurist, Hugh S. Legaré, writing in 1834, lamented that the soil of the low country had worn out; the old fields, he said, had been left to run to waste and "thickets of stunted loblolly pines, half choked with broom-grass and dog-fennel," had taken possession.¹ The whole population about the Wateree and Congaree had been represented to him as breaking up and moving *en masse* to the West. At first, he said, the deserted settlements were only in Goose Creek, Williamsburg, and Saint Stephen's; but later the disease appeared to him universal.² In the convention of 1833, J. L. Wilson, of Charleston, spoke to the same effect. He represented many of the fields as being deserted, the labor as fleeing to Alabama, Louisiana, and elsewhere, the cities as falling into ruin, and the commerce as destroyed. Much of the injury, he added, might be put down to the withdrawal of capital due to the operation of the tariff.³

Slave-holding
communities.

The low country, where slaves were more numerous, suffered more than the western part of the State. The decrease in population was very marked in Charleston District, and began to show itself long before the tariff bill of 1828 became a law. A census of the State in 1829 showed an increase of whites in a lower district of only 43 in the nine previous years, and a decrease in Charleston District of 2,000.⁴ From 1790 to 1800

¹ Legaré, *Works*, I. 218.

² *Ibid.*, 221.

³ *Journal of the South Carolina Convention of 1833*, p. 30.

⁴ In James Hamilton's Speech at Walterborough, Oct. 21, 1828, we get the same picture, a trifle more highly colored. He says:

the white population of the State had increased 40 per cent, and the slaves 36 per cent; from 1800 to 1810, the white 9 per cent, and the slaves 34 per cent; from 1810 to 1820, the white 11 per cent, and the slaves 32 per cent; from 1820 to 1830, the white 8 per cent, and the slaves 22 per cent; and from 1830 to 1840, the whites only 0.5 per cent and the slaves but 3 per cent. In 1820 the lots in the upper division of the State were valued at \$1,389,406, and in the lower at \$8,587,663; in 1825, in the same divisions, at \$1,766,472, and \$9,272,684; and in 1834, at \$1,944,340, and \$8,353,403.¹ In 1820, the lands in the upper division were valued at \$4,562,897, and in the lower at \$5,852,251; in 1825, at \$4,592,011, and \$5,808,020; and in 1834, at \$4,839,121, and \$5,252,746!²

Population
and wealth.

All these facts point in the strongest possible manner to the real cause of the backwardness of South Carolina,

Slavery the
economic evil.

"The consciousness that South Carolina was sinking had dawned upon them suddenly. Did they want the melancholy signs of coming decay, let them look abroad through the land and see the wilderness regaining her empire; let them look at the waste and desolate spots that had lately teemed with life and fertility. Where were the beautiful homesteads and venerable chateaux which once thronged the land? 'On the very hearthstone where hospitality once kindled the most genial fires that ever blazed on her altars, the fox may lie down in security and peace, and from the mouldering casement of the very window from which the notes of virtuous revelry were once heard, the owl sends forth to the listening solitude of the surrounding waste her melancholy descant to mark the spot where desolation has come.' If such signs were not enough, let them look at their metropolis, designed to be the emporium of three States, lately visited by every flag of the civilized world, and where were the ships, the capital, the merchants? All gone in the ruin of its foreign trade; and with them, the hopes of the people." See *Tariff Discussions* (1827-32), pamphlet in Harvard College Library (Library No. VI. 4706).

¹ *Seventh Census*, Compendium, 340.

² *Comptroller's Reports*, in *South Carolina Laws* (1820, 1825, 1834).

Slavery
fundamental.

namely, the existence of slavery; and it seems to us now rather remarkable that McDuffie and Legaré and others could dwell so constantly on the situation and fail to see that slavery was the fundamental factor. Slavery, as has been said,¹ made it inevitable that the South should rely mainly on one commodity, the price of which was steadily falling, because of the opening up and cultivation of fresher lands in the West. South Carolina recognized early that slavery prevented the introduction of manufacturing, and therefore rendered acquiescence in the protective policy impossible. It soon became obvious that there was a conflict of interests; but it does not seem to have occurred to her that slavery was, in itself, an economic evil.

The
institution
threatened.

If there had been no slavery, there might still have been very considerable opposition to the tariff in the South, because the Southern soil was naturally better adapted to agriculture than the Northern, and this, of itself, would have tended to delay the development of manufacturing interests. One thing, however, is quite certain: but for slavery the opposition to the tariff in South Carolina would not have been so unanimous, and would not have gone to the same lengths. As it was, every discussion directed attention more and more strongly to slavery. At first it was recognized as the institution which rendered a conflict of interests inevitable. Next it was felt that every question that was raised involved it in a very definite way, and that either the policy of the general government or the institution would have to be given up. Slavery thus became a conscious element in the struggle.

Panama
debate.

The Panama debate, in 1826, fixed public attention on the subject, and drew out some remonstrances and threats from the South; but there does not seem to have been a great deal of uneasiness till later. Hayne

¹ See above, p. 41.

and McDuffie, in 1826, apprehended no violation of the constitutional rights of the South; but before 1833 their views had undergone a radical change. There were many others in the State who had been seriously alarmed from the time the subject first came up for discussion in 1826. The *Charleston Mercury*, July 28, 1826, contained a communication warning the people of their danger. "The negro bigot still prates of the abstract rights of man; and from the village pulpits to the halls of Congress, in defiance of the Constitution, we hear the enunciation of sentiments that can only breed among us insurrection and bloodshedding." ✓ The interests of the South, the writer continued, had been disregarded; wealth had been extorted by a vicious and unjust tariff; and the Constitution had been unduly extended in still other directions. There was but one source of salvation,—the talent of the Carolina Representatives. That alone could preserve the Union. "Superiority in talent may counterpoise superiority in numbers. We have not hitherto been blind to this policy."¹

The South
aroused.

In 1827 appeared a series of articles which probably had more influence than all others. These were "The Crisis," or "Essays on the Usurpations of the Federal Government, by Brutus."² Through thirty-one num-

"The Crisis."

¹ *Charleston Mercury*, July 28, 1826.

² "Brutus" was Robert J. Turnbull, of Charleston. His father had moved to Charleston from East Florida in 1780. The son's first act of manhood was, as he himself stated, to take an oath to support first the Constitution of South Carolina, and, second, that of the United States. He could not, he added, forget the supremacy of his first oath. Turnbull was one of the most popular of the anti-Union leaders, taking rank with James Hamilton, Jr., Hayne, and McDuffie. He was a devout follower of Jefferson, from whom he claimed to have received his doctrine. He lived to see his principles incorporated in resolutions, remonstrances, and protests. Immediately after reading the President's proclamation,

Sketch of
Turnbull.

Phantom of
consolidation.

bers, and more than one hundred and fifty pages, "Brutus" poured out a torrent of rhetoric against the policy of the general government, and called upon his fellow citizens to resist. "Brutus" dealt sledge-hammer blows and struck at every evil in sight in such a bold, fearless, direct manner as to win the unbounded admiration of the masses. The phantom of consolidation was brooding over his faculties; the government, he argued, had made more rapid strides towards consolidation in the six years since 1821 than in the thirty preceding; it was to the interest of the North and West for the general government to usurp powers and depart from the social compact.

Unwarranted
powers.

The South, therefore, from every consideration, should oppose the doctrine of implied powers; and this dangerous doctrine "Brutus" proceeded to discuss in every aspect through eighty long pages. Hostility to the South was manifest, he added, not simply in the tendency of the government to go beyond its powers in the matter of the tariff and internal improvements; the presses were belching anathemas against the Southern system and the Southern policy; insurrectionary doctrines were being promulgated in a thousand ways; an insidious attack was meditated against the tranquillity of the South. "The time approaches when Congress can take no vote that shall not be an expression of opinion on the subject of slavery. *The South should not permit any expression of opinion whatever*; but should the subject be discussed, there should be but one sentiment as to what should be the consequence."

Secession
advocated.

There was no time for delay. Congress must not have an opportunity to express an opinion against slavery as an evil. "It will be an act of decided, unequivocal

he offered his services to Governor Hayne, requesting to be attached to the corps which should be assigned to the post of greatest danger. He died on June 14, 1833.

hostility. It will be a declaration of War and must be treated and resisted as such. It will be the Entering Wedge, with which at some future day our vital interests are to be Split asunder. It will be the Landing of an enemy, and a bitter enemy too, on our soil. . . . He must be resisted. There must be no discussion. Discussion will cause Death and Destruction to our negro property. . . . The Colonization Society must be driven out of the Halls of Congress, and driven out with Disgrace. Should Congress ever countenance it, my wishes will be for Disunion . . . Let us say then, 'Hands off — mind your own business — attend to your own Post Office.' *If this fails, let us separate. It is not a case for reasoning or negotiation. It must be a word and a blow.* The man who comes into my yard and preaches to my slaves, must not expect to go out with whole bones."¹

Discussion
dangerous.

Further proof of the proposition that slavery was a conscious element in the nullification controversy might be gathered from contemporary speeches. It is sufficient to note that "Brutus's" views were embodied in the resolutions of the South Carolina Legislature in 1828. Congress, it was resolved, has no power to meliorate the condition of free colored or slave property. On this subject there can be no reasoning between South Carolina and any other government. It is a question altogether of feeling. "Should Congress claim the power to discuss and take a vote upon any question connected with domestic slavery of the Southern States, it is not for your committee to prescribe what course ought to be adopted to counteract the evil and dangerous tendency of public discussions of this nature. The minds of our citizens are already made up that, if such discussion appertain as a matter of right to Congress, it will be neither more

South
Carolina
Legislature
on slavery.

¹ See *The Crisis*, Nos. 2, 3, 4, 25, 26, 27. The Italics in the foregoing extracts are the author's.

nor less than the commencement of a system by which the peculiar policy of South Carolina, upon which is predicated her resources and her prosperity, will be shaken to its very foundation. *In the opinion of your committee, there is nothing in the catalogue of human ills which may not be preferred to that state of affairs in which the slaves of our state shall be encouraged to look for any melioration in their condition to any other body than the Legislature of South Carolina. Your Committee forbear to dwell on this subject. It is a subject on which no citizen of South Carolina needs instruction. One common feeling inspires us all with a firm determination not to submit to a species of legislation which would light up such fires of intestine commotion in our borders as ultimately to consume our country."*¹

¹ *Resolutions*, in *South Carolina Laws*, 1828. The Italics are those of the author of this monograph.

CHAPTER IV.

SOUTH CAROLINA'S CHANGE OF ATTITUDE.

1823-1828.

THE political attitude of South Carolina up to about 1823 had been based partly on old Federalist traditions, partly on the leadership of the remarkable body of young men who came into public life about 1812, but principally on a belief among very influential men that the interests of the State were best served by a broad and national policy. As we have just seen, however, soon after 1820 both the economic and the political condition of the country began to alter; on one side the North was calling for an extension of freedom; on the other side, the South began to be conscious of the danger to slavery. The inevitable result was a revulsion in the policy of the State: notwithstanding a stubborn resistance by a considerable minority, the ten years from 1823 brought the State to the issue of Nullification.

Change
of policy.

The first warning that South Carolina was to break away from the liberal leadership of Calhoun, McDuffie, and others was given by Thomas R. Mitchell in the House of Representatives in 1823. His speech sounded a new note from South Carolina.¹ For the first time, so far as appears, was the constitutional ob-

Mitchell leads
the way in
Congress.

¹ The Mitchell to whom Mr. Adams refers in his *Memoirs* as "a good-humored man, and of very good talents." J. Q. Adams, *Memoirs*, VIII. 449.

jection to a tariff measure raised by one of her representatives. His words, therefore, have a significance not measured by Mitchell's lack of eminence. "He was opposed to the measure," he said, "because it would graft into our government the restrictive system, the pernicious effects of which had been experienced by every nation which had adopted it to any extent; and because there were constitutional difficulties to its passage, in his mind. . . . The gentleman may baptize the bill as he pleases, and it will still be a bill to enrich one branch of industry at the expense of another; to tax agriculture and commerce for the benefit of manufactures."¹

Hamilton
follows.

This year Mitchell stood alone, but the following year, in the session of 1823-24, he was joined by James Hamilton, Jr. and Robert Y. Hayne. These two, the former a Representative, the latter a Senator, at once began to organize a systematic opposition to the centralizing policy of the government. Their speeches on the tariff bill of 1824 are worthy of notice, because for the first time we get a glimpse of the principles which they endeavored to apply in 1833. Hamilton was the more emphatic of the two. "The encouragement of manufactures," he said, "is destructive of that uniformity of taxation which is the imperative precept of the Constitution. The cunning implication by which you get at this power only adds a mockery to an unjustifiable wrong. . . . But the objects of this Confederacy furnish the principles for the interpretation of the instrument. We are independent States, and our league merely looks to common defence, external and internal commerce, an army, navy, judiciary, and the powers necessary to carry these objects into effect. No one member of this Confederacy could have contem-

¹ *Annals of Cong.*, 17 Cong., 2 sess., 1002 (1822-23).

plated joining a union in which 'the common defence and general welfare' meant a sacrifice of any part of it under fanciful and arbitrary considerations of 'good of the whole.' We are not a consolidated empire, and consequently we have no right partially to oppress any portion of the state, however trifling may be the interest violated. . . . But on the ground of expediency, is it nothing to weaken the attachment of one section of this country to the bond of union? . . . Let no man, however, tax me with holding incendiary doctrines; I know that South Carolina will cling to this Union as long as a plank of it floats on the troubled ocean of events. I know her lofty nationality and generous patriotism."¹ Rarely has a great prophet worked harder than did Hamilton to blast his own reputation.

Hayne's remarks were in the same strain, and furnish a fitting prelude to his constitutional exposition on the floor of the Senate six years later. Where, he asked, did the government get the power to adopt a system to encourage a particular branch of industry? To say that government had the right to encourage certain pursuits and to prohibit others, was to make it, not merely a consolidated, but an unlimited government. "Gentlemen surely forget that the supreme power is not in the government of the United States. They do not remember that the several States are free and independent sovereigns, and that all power not expressly granted to the federal government is reserved to the people of those sovereigns."² Hayne follows.

When we compare these utterances of Mitchell, Hamilton, and Hayne in 1823 and 1824 with those of Simkins, McDuffie, and Calhoun in 1817, we observe a remarkable change. And these speeches, as we shall

¹ *Annals of Cong.*, 18 Cong., 1 sess., 2208 (1823-24).

² *Ibid.*, 648.

see, only reflected the sentiments which had begun to spread among the people of South Carolina eight years earlier, and which by this time were probably entertained by the majority. Let us turn now to trace this change within the State.

William
Smith
opposes
Calhoun.

To Judge William Smith must be assigned the principal place in organizing the movement, and directing it, up to 1826. With his first political breath he commenced his opposition to the policy advocated by Calhoun. In his maiden speech in the United States Senate in 1817, he opposed the "Bonus Bill," and in the following year made a vigorous fight against the tariff. In 1823, probably because he had antagonized Calhoun too strongly, he was compelled to make room for Robert Y. Hayne. Thereupon he returned to the State, and organized his forces for an attack all along the line.¹

Thomas
Cooper.

Judge Smith had a valuable ally in the President of the South Carolina College, Dr. Thomas Cooper, of whom Jefferson wrote to Cabell: "He is acknowledged, by every enlightened man who knows him, to be the greatest man in America in the powers of his mind and in acquired information, and that without a single exception." Perhaps we get a more correct estimate of the same man from President John Quincy Adams: "A learned, ingenious, scientific, and talented mad-cap is Dr. Cooper."² Cooper was born in England in 1759, and was educated at Oxford. Threatened with prosecution at home for a political tract which he published, he left England, and, after a short stay in France, where he associated on intimate terms with the Republican leaders, came to America in 1792. A few years later he took an active part in the agitation against the Sedi-

¹ O'Neill, *Bench and Bar of South Carolina*, I. 109; Benjamin F. Perry, *Reminiscences*, 81.

² La Borde, *History of the South Carolina College*, 163 *et seq.*

tion Act, and got himself sentenced to six months' imprisonment and a fine of four hundred dollars for libel. After filling the Chair of Chemistry first at Dickinson College, Pennsylvania, and then at the University of Pennsylvania, he went to South Carolina to take the same Chair in the State College. He served as President from 1820 to 1834, and at the same time delivered lectures on politics and economics.¹ He printed his "Lectures on the Elements of Political Economy" in 1826, and somewhat earlier a "Manual of Political Economy"; and in 1823 he had issued a tract "On the Proposed Alteration of the Tariff, submitted to the Consideration of the Members from South Carolina in the Congress of 1823-24." This was his third attempt to direct attention to the subject. He had published a similar article in the *Analectic Magazine*, July, 1819; and one in the *National Intelligencer*, January, 1822, over the signature of "Terra."

Cooper's
writings.

In his economic doctrines Dr. Cooper showed himself a thorough-going advocate of *laissez faire*. In the above mentioned tract,² addressed to the South Carolina Congressmen, he contended that the power given to Congress to regulate trade and commerce should be construed as a reasonable discretion, to be exercised in conformity to the main objects of society; that, if regulations burdened one part of the nation's industry more than another, they were unconstitutional and unjust; and that the proposed alterations would work this very injustice. Agriculture, he said, was the chief industry of the country; to foster every other interest at the expense of the agricultural was the very reverse of sound policy. Furthermore, retaliation would decide other nations to retaliate. The existence of the Southern States depended on their great staples.

Cooper as
an agitator.

¹ Pamphlet (Boston Public Library).

² *Ibid.*

Great Britain would be driven to foster Brazilian competition. "Let the Southern States look to it, . . . they are threatened, . . . not with taxation, but destruction."¹

Cooper's
influence.

Whatever Dr. Cooper could do to spread his free trade principles, he did with all his might. He did more: he lost no opportunity to insist on the absolute necessity of maintaining the sovereignty of the States, and of resisting federal encroachment; it was he who created such a sensation in July, 1827, at a meeting in Columbia, by declaring that the State would soon have to calculate the value of the Union. It is certain, then, that he had no little share in arousing in the people of South Carolina the feeling that there was oppression and danger in the policy of the general government. At any rate, we find such a share ascribed to him, in 1830, by Joel R. Poinsett in a letter to President Jackson on the condition of affairs in the State: Poinsett wrote that he found public sentiment poisoned by the opinions of leading politicians and "by the pernicious doctrines of the President of the College, Dr. Cooper, whose talents and great acquirements give weight to his perverse principles, and render him doubly dangerous."²

Protests.

The task before Judge Smith and Dr. Cooper became easy in proportion as the demands of the protectionists became immoderate; and moderation had now become a thing of the past. From 1821 to 1824 protests poured into Congress from almost every county of South Carolina, — from Abbeville, Charleston, Richland, Beaufort, Darlington, Kershaw, Sumter, Georgetown, Newberry, Chesterfield, Spartanburg, and others. The Congressional delegation voted solidly against the passage of the bill of 1824, and two of the members delivered

¹ Pamphlet (Boston Public Library).

² Stillé, *Life of Poinsett*, 57.

themselves of the sentiments to which attention has been called. But the most significant action was that taken by the South Carolina Legislature in the year following the passage of the tariff measure.

Judge Smith was elected a member of the State House of Representatives in 1824, and on December 15, 1825, succeeded in carrying through a set of resolutions which reversed Calhoun's policy and formally pledged the State to the doctrine of strict construction.¹ By the passage of these resolutions, the State deliberately entered upon that course of opposition to the general government which ended only with the surrender at Appomattox. For this reason, they are deserving of extended notice. They declare that Congress had no power to adopt a general system of internal improvement; that it was unconstitutional for Congress to tax the citizens of one State to make roads and canals for citizens of another; and that protective duties were unconstitutional.² The report which accompanied the resolutions discussed at length the origin of the Union, setting forth that the two ideas which prevailed at the adoption of the Constitution were the two, and only the two, which led to the calling of the Federal Convention, namely, to give better protection to our foreign commerce, and to prop up the national credit. It may be remarked here that most of the thinking and reasoning of South Carolina, and in fact of the Southern statesmen after 1825, is characterized by the same failure to recognize the very important distinction between the work which it was generally supposed that the delegates to the Constitutional Convention would do, and the work which they did.

The State
committed
to strict
construction.

An important
distinction
ignored.

¹ Mr. Simkins recorded on the Journals a protest against the resolution. The vote stood: House, 73 to 38; Senate, 22 to 20. *Niles Register*, XXIX. 293.

² *South Carolina Laws* (1825), 88.

Calhoun.

Here we must turn our attention to Calhoun, and ascertain what part he was playing all this time. Where was this "leader of the South in its opposition to the tariff" while South Carolina was undergoing such a remarkable change? Is it true that the State moved "like a Cartesian image" under the pressure of Calhoun's finger, or would there rather be more truth in saying that South Carolina did the pressing and Calhoun the moving? A brief examination of the great statesman's career from 1811 to 1828, as shown in a previous chapter; and a comparison of his attitude with that of South Carolina, and of his earlier with his later views, will help us form a correct idea of his influence on the course of affairs.

Calhoun follows.

Just at what time Calhoun changed from a protectionist to a free trader, from a liberal to a conservative, from a liberal constructionist to a strict constructionist, from a progressionist to an obstructionist, has been difficult to determine. One thing is clear: his change followed that of the majority of the people of the State; and whatever pressure there was, was exerted by the State on him, and not by him on the State. Unfortunately, Calhoun gave up his seat in Congress in 1817, just at the time when we especially wish to know his views; and consequently we have comparatively few satisfactory expressions from him on questions of great public importance during the most interesting period of his career. Perhaps the expressions are the more scarce and the more unsatisfactory during this period because of his aspirations for the Presidency and of a very natural desire not to give offence.

Fortunately, we now have a remarkable letter,¹ not

¹ Letter to Hon. Robert S. Garnett, of Virginia, dated Washington, D. C., July 3, 1824. See Appendix A for the letter in full. It was published in the *Daily Advertiser* of Montgomery, Ala., March 7, 1893. Mr. A. S. Garnett, of Lloyds, Essex County,

made public till 1893, which throws light on his attitude as late as the summer of 1824. In this letter Calhoun touches upon the fundamental principles underlying our form of government, as well as upon questions of policy that were then before the country. After expressing his complete satisfaction with the distribution of powers between the States and the general government, in the concrete as well as in the abstract, he turned his attention to questions more immediately at hand; namely, how the line separating the powers of the States and the general government should be drawn; or upon what principles the Constitution should be construed. "I can give but one solution to this interesting question, and that is, it ought to be drawn in the spirit of the instrument itself. I know that there has been an anxious desire among many of our best patriots to devise some one general and artificial rule of construction to be applied to any portion of the Constitution, but I cannot persuade myself that it is practicable, and believe that all such attempts must end in weakening rather than strengthening the rights of the States. It has been said, for instance, that the construction ought to be invariably rigid against the power of the general government. . . . I am forced to the result that any doubtful portion of the Constitution must be construed by itself in reference to the true meaning and intent of the framers of the instrument, and consequently that the construction must, in each part, be more or less rigid, as may be necessary to effect the intention."¹

Letter to
Garnett in
1824.

Calhoun then proceeded to test his general principles by his past acts. He had never uttered a word that could give offence to the most ardent defender of state

Calhoun and
state rights.

Va., son of the Hon. Robert S. Garnett, states, in reply to my letter of inquiry, that the original is still in his possession.

¹ *Ibid.*

Calhoun on
the Bank.

rights. His views on this subject had been misrepresented to the people of Virginia. He had done no act which any one could condemn without condemning Jefferson and Madison and Monroe. As to the National Bank, Madison had approved one bill which he, Calhoun, had contributed to pass, and Jefferson had approved the extension of a branch of the old bank to New Orleans. When advocating the passage of the bill, he had said nothing which could offend any one. He had left the constitutional question untouched. "I felt satisfied that the power existed; but at the same time respected those who took the opposite view, for I have always considered the power the least clear of those which have been exercised by Congress."¹

Calhoun on
internal im-
provements.

Calhoun in this letter next reviews his course with reference to the question of internal improvements. It had been objected, he said, that he was a friend to the system. Here again he shields himself with Jefferson and Madison and Monroe: the same objection could be made against every distinguished public man on the stage, and most of them are more deeply committed than he. "I have never yet committed myself beyond the mere right of making an appropriation. . . . I am perfectly open to the examination of that question should I ever be called on to act. It is, however, due to candor to say that my impression is that the power does exist to a certain extent; but as I have always believed that it should not be exercised without a clear necessity, and as I do believe that the mere right of applying our money, not as a sovereign without the consent of those to be affected, but as a mere proprietor with their consent, will be found sufficient in practice, I have carefully abstained from coming to any final conclusion until it becomes absolutely necessary."² It was fast becoming absolutely necessary; for his State found it

¹ Letter to Garnett.

² *Ibid.*

desirable the very next year to declare that Congress had no power to adopt a general system of internal improvements, — that is, such a system as Calhoun had urged in 1817.

Calhoun in this letter was absolutely silent on the tariff question. But the following year a dinner was given to him at Abbeville, South Carolina, by his constituents, May 25, 1825; there he touched upon the tariff as well as upon all the other questions with which he had had to deal, holding up his course for the approval of his constituents, and expressing no doubt as to their disposition.¹ In June of the same year he was still far from sectionalism; we find him in Augusta saying: "No one would reprobate more pointedly than myself any concerted union between States for interested or sectional objects. I would consider all such concert against the spirit of the Constitution, which was intended to bind all the States in one common bond of union and friendship."²

Calhoun on
sectionalism.

It is an indisputable fact that Calhoun did not find it necessary to break with his past, and to join the opposition forces of his State, till after the passage of the tariff act of 1828. The conditions which brought about the change are almost exactly as he stated them in his speech on the Force Bill in 1833.³ The circumstances attending the passage of the tariff of 1828 seem to have opened his eyes to the full extent of the danger and oppression lurking in the protective system, and he began to doubt whether Jackson's election would guarantee the desired reforms. The ambiguous conduct of the supporters of Jackson had awakened his suspicions. And, although he did not abate his zeal for the election of Jackson, still he began a diligent scrutiny of the Constitution, in order, as he stated, to

Date of
Calhoun's
shifting.

¹ *Niles Register*, XXVIII. 266.

² *Ibid.*, 267.

³ *Works*, II. 396, 397.

ascertain the nature of our political system. It would have required no spirit of prophecy to predict that the nature of our political system would be found, under such circumstances, such as to open a way of escape for the South. The pressure was too great: both parties had heaped on too much fuel and generated too much steam to permit the trouble to pass away quietly.

Calhoun led
by his State.

Enough has been established as to Calhoun's course to dispose of the absurd statements of Draper and others. Their theory of Calhoun's influence on the course of events in South Carolina down to 1830 was evolved largely from their inner consciousness and prejudices. It is clear that Calhoun did not take the initiative in opposing the aggressions of the federal government till after 1828; and that the movement which reached its climax in 1833 was not due to mere political disappointment. It would be much nearer the truth to say that South Carolina coerced Calhoun, than to say that Calhoun misguided South Carolina. Further evidence on this point from Calhoun's own writings will be presented later, when the origin of the nullification doctrine is under discussion.

CHAPTER V.

FORMULAS OF NULLIFICATION.

1828-1832.

THE disorders, then, from which South Carolina was suffering in 1832 were due to the policy of the central government in only a very slight degree, if at all. This was as clear a case of *post hoc, ergo propter hoc*, as one could wish. But still the majority of the people of South Carolina had worked themselves up, or had been worked up by their leaders, into believing that the steady encroachment of the central government was the source of all their woes; and it is with this belief, and the action that it led to, that we have to deal here, and not with the foundation for the belief. We turn now to the remedy that was adopted, — to its inception and development.

Discontent in
South
Carolina.

Just as the full extent of the disorders was grasped only by degrees, so the necessity for any other than the ordinary political remedy was not seen at the outset. Through 1826, 1827, and 1828, even after the conduct of Jackson's supporters during the tariff struggle had alarmed the South Carolina leaders, the election of Andrew Jackson to the Presidency was looked upon as all that was needed to insure a return to the good old republican principles of 1798. In 1826, in an address before the Agricultural Society of Edisto Island, James Hamilton, Jr. reminded his hearers that the only remedy for the disease which the unholy union of discordant spirits had generated was the election of the "hero of New Orleans." He drew a striking

Jackson
the hope of
the State.

contrast between the character of Jackson and that of Adams, laying stress upon the extraordinary common sense of the former, his unbending integrity, and his exalted notion of honor and justice. When he thought of Jackson's virtues and transcendent military services, and when he recurred to the fact that Jackson was a Southern man, with Southern feelings and prejudices, he saw in him a man in whom the people could confide and by whose energies and wisdom the nation could be brought back to the "governance of rightful principles."

Jackson
praised.

Mr. Hamilton, the reporter assures us, resumed his seat amid the plaudits of the people, whose bosoms faithfully responded to the solemn and instructive truths he had uttered.¹ Something should be pardoned in this to the spirit of the Fourth of July. There was much rhetoric on such occasions, and from 1825 to 1828 Jackson was the source of inspiration. He was toasted from one end of the State to the other. There was strong competition to see who could sing his praises loudest, and the palm fell to those who a few years later heaped the harshest abuse upon his head. In 1826 Jackson was the "Saviour of the West and the pride of the country," a hero who was "in war as terrible as the roaring of a cataract, in peace as gentle as the unweaned lamb." In 1833, the same man was, in the eyes of the same men, "a President whose choicest aliment is human blood."² In 1826 these people believed that Jackson was of their way of thinking, and would not oppose them in anything; in 1833 they knew that he would hang them if the occasion should arise.

Perhaps the most substantial indication of the strong sentiment of the State in favor of Jackson is the action

¹ *Charleston Mercury*, July 21, 1826.

² *Ibid.*, July 10, 1826; *Proceedings of the Convention of 1833*, p. 31.

taken by the members of both branches of the Legislature on the 19th of December, 1826. On that day, just after adjournment, a meeting was held in the hall of the Lower House, at which all the Representatives and Senators, except about twenty, were present; and, by a vote of 135 to 2, it was resolved that the State of South Carolina would support Andrew Jackson in the next general election. The preamble set forth that Jackson had contributed more to the reputation of the country than any man since Washington; that he had been an advocate of public faith, of just laws, of sound policy, and an uncompromising enemy of fraud and corruption; that his would be an administration strong in rectitude of purpose, public confidence, and affection; and that measures would be recommended not to conciliate one section of the country, but for the general good.¹ The insight of this Legislature seems to have been better than that of the Legislature of 1831.

Legislature
nominates
Jackson.

It would be tedious to trace the current of affection for Jackson during the years immediately after 1826. It will suffice to say that as late as 1830 it was still warm and rapid. In that year in the "Great State Rights Celebration," Robert Y. Hayne called upon his audience "to pour forth the acknowledgments of a nation's gratitude to the author of the Maysville Road Bill veto. . . . Great as are the claims of General Jackson to the gratitude of his country, this act has given him new titles to our regard. On no occasion of his eventful life has he displayed a more generous disregard of all selfish considerations, more exalted patriotism, or more heroic courage; and should this prove to be only the first step in a course which is to restore the Constitution to its original principles and

Jackson
the State's
idol.

¹ *Charleston Mercury*, December 26, 1826.

Jackson
trusted.

bring back the government to a sound and wise policy, the name of Jackson will go down to posterity as the Washington of his day and generation." ¹ It may be wondered if Hayne recalled these words two years later, when he was composing his "Counter Proclamation." As Professor Woodrow Wilson remarks, the people followed Jackson to Washington in 1829, and surely in all the procession none could be found disposed to yell more lustily or to throw their hats higher in the air than the South Carolinians. They had triumphed. Jackson was with them. Had they not stood by him from the beginning? Now at last they would make headway against the destroyers of their peace and prosperity. If their idol would not openly come to their assistance, he would at least not offer any direct opposition to their plans. Their faith was great. We shall see with what difficulty they were convinced that it was misplaced.

Policy of
the State.

Although much was expected from Jackson, still it was thought best that the State should pursue such a course as might, in the mean time, defeat the policy of the general government, and might have also the effect of bringing the majority round to a more just line of action. What that course should be was a question on which great difference of opinion was manifested.

Reliance on
the ballot-box
advised.

In the first place, there were those who were disposed to trust public opinion and the ballot-box, and who were outspoken in their determination to oppose any project tending directly or indirectly to weaken the bonds of union. Among these men was conspicuous the same William Smith who, from 1820 to 1825, had organized the opposition to the Calhoun school. Verily his lines had fallen in hard places. In 1822, as we have

¹ *Great State Rights Celebration, 1830, Proceedings.*

seen, he was turned out of the United States Senate because he was too narrow; in 1830 he was again displaced, and this time because he was too broad. Not himself, but his masters, had changed, or at least they had advanced much more rapidly than he. In 1830 he was still a strong advocate of state rights, but he was no nullifier. His sentiments, freely expressed, were that public opinion, and public opinion alone, could correct the abuses complained of, and that party violence in a single State would be worse than useless.¹ Governor Taylor likewise advised reliance on the ballot-box. The tariff, he said, possessed the essence of tyranny; it was the duty of the State to use all fair means to secure its repeal. To those who would go further, he would say, Look to the neighboring States. It would be folly for South Carolina to go alone. Secession would be accompanied with difficulties: the project of forming conventions and withdrawing Representatives from Congress would repeal no law; the general government, if it did its duty, would bring about a collision. "If I have any influence, it will be exerted to preserve the Union."² The old war-horse, David R. Williams, also counselled moderation: reason, he said, not force, should rule; the people had discovered that the protective system was unconstitutional because it lay heaviest on them; war would follow if the Legislature should take the remedy into its own hands.³

William
Smith's con-
sistency.

Gov. Taylor
opposes
secession.

Williams
counsels
moderation.

Working shoulder to shoulder with Smith and Taylor and Williams were Judge John Peter Richardson; Ex-

¹ Speech at Spartanburg, August 1, 1831. Boston Public Library Collection of Congressional Speeches (Shelf No. 4325, 107).

² Dinner of the Republican Light Infantry Co., Columbia, S. C. : *The Telescope*, July 16, 1828.

³ Reply to a Committee of Gentlemen from Union District : *Charleston Mercury*, August 27, 1828.

Union men.

Governor Richard J. Manning; Congressman William Drayton; Judge Daniel E. Huger; the diplomat and statesman, Joel R. Poinsett; Judge John Belton O'Neale; Judge David Johnson; the brilliant lawyer, James L. Petigru; the jurist, Hugh S. Legaré; and able representatives from such families as the Presslys, the Pringles, the Gaillards, and the De Saussures. These were men who, in point of ability, were not inferior to the more widely known leaders of the state rights party, and who in point of temperament were undoubtedly better qualified to direct a constitutional government. As we shall see, their judgment stands out in striking contrast to that of their opponents.

Nullification
leaders.

Opposed to these men as to the measure of resistance were, in the beginning, James Hamilton, Jr., frank, gallant, but too impetuous of action; George McDuffie, full of determination, full of fire, uncompromising, but well qualified to play a part in stirring times; Robert J. Turnbull, vigorous and outspoken; Chancellor William Harper, a man of strong mental powers, comprehensive, scarcely inferior to Calhoun as an expounder of metaphysical doctrines; Robert Barnwell Smith (Rhett), hot-headed, the most extreme of all; Langdon Cheves, genial, broad-minded, widely experienced; Judge Colcock; Congressman W. D. Martin; Ex-Congressman Eldred Simkins; Robert W. Barnwell; A. P. Butler, Pickens, Bonham, and a host of others.

McDuffie
suggests non-
intercourse.

Down to the autumn of 1828 these leaders had not come to an agreement as to the best course to be adopted. That resistance of some kind should be made was the only point on which all united. Some urged an excise duty on the consumption of protected articles. McDuffie, in particular, advocated this measure:¹ a

¹ Dinner to McDuffie and Martin, Columbia: *Charleston Mercury*, June 28, 1828.

heavy tax levied on Northern manufactured goods after they had become incorporated with the mass of the property of the State would, he maintained, be constitutional. This proposition received the approval of certain public meetings,¹ and was indorsed by Calhoun.² The object was to exclude protected articles from the State. No such tax was imposed, but the object was attained to some extent by the action of individuals. In all parts of the State meetings were held and resolutions were adopted, pledging those in attendance to purchase no protected articles from the North, and to stop intercourse with Kentucky and adjoining States till the tariff was repealed.³ At Edgefield, July 26, 1828, at a meeting said to have been greater than any before witnessed in South Carolina, it was resolved to suspend all commercial intercourse with the tariff States, and, in particular, to abstain from purchasing the manufactures of the North, and the horses, mules, hogs, and cattle of the West. A committee was appointed to communicate with committees and meetings of other Southern States to insure union and concert.⁴ Their proceedings had a decidedly revolutionary flavor about them. One can easily imagine the enthusiasm that was aroused when the leaders, having cast off their broadcloth, appeared defiant in the cooler and more comfortable homespun.⁵

Non-inter-
course
indorsed.

It was apparent to some from the beginning, as it soon became apparent to all, that, while homespun and committees of correspondence might add color and flavor, they would be hopelessly ineffectual as measures to check the encroachment of the general government. "Brutus" in "The Crisis" was foremost in urging the

Turnbull
advocates
State
intervention.

¹ *Charleston Mercury*, July 7, 1828.

² *Works*, VI. 57, note at end of the "Exposition."

³ *Charleston Mercury*, July 12, August 4, September 8, 10, and October 9, 1828.

⁴ *Ibid.*, August 4, 1828.

⁵ *Ibid.*, July 16, 1828.

"Resistance"
in
"The Crisis."

abandonment of feeble measures, and the adoption of a bold and radical policy.¹ He would have no temporizing. Let the issue be squarely joined. Let the tariff be got rid of by *Resistance*, he cried. The consequences would not be awful. Let coercion be employed, and the government would be without power. Georgia resisted; and the issue was well known. The government had not advanced far enough towards consolidation to enable it to coerce a State. If war should result, the government could not put the State down. This could be done only in case all the Southern States were leagued against South Carolina.² "The Constitution is a compact between the states, and there are no parties to it, excepting the people of the different states in their corporate capacities." Therefore the government is only a trustee, to perform certain duties. The States being sovereign parties to the compact, it is their right in all instances of usurpation to remonstrate; such a right belongs to the Legislature. When States differ as to the true intent of the compact, they should not look to the Supreme Court. To allow the federal government to appoint the Supreme Court as the arbiter would be to make it the sole judge in its own cause. It is not the business of the Supreme Court to decide political questions. On questions of vital interest there was no tribunal of last resort, and no sovereign State could submit such questions to any arbiter on earth.³

Nullification
in
"The Crisis."

Much has been written on the origin of the nullification doctrine. "The Crisis" has been overlooked. In it we find all the doctrine stated in strong, vigorous language. Only the name is wanting. Robert J. Turnbull, and not John C. Calhoun, gave the world the first formulation of the nullification doctrine. "The

¹ *The Crisis*, 1827. ² *Ibid.*, No. 33. ³ *Ibid.*, Nos. 8, 22.

Crisis" had great influence; it created much excitement in the State; Calhoun must have seen it, and, as he uses many of its precise phrases, we are almost forced to conclude that when, after the passage of the "bill of abominations," he entered upon an examination of the Constitution to find an ultimate remedy, he kept his eyes fixed upon "The Crisis." Calhoun refined the doctrine, put it into shape, and elaborated it, but it would seem that Robert J. Turnbull was the originator of the South Carolina doctrine.

Calhoun and
"The Crisis."

Turnbull was moving too fast; the time for taking the ultimate step had not yet arrived; the crisis as yet existed only on paper. The leaders preferred to await the action of Congress, which would meet in December. Congress met; the tariff struggle began promptly, and ended in the defeat of the free-traders.

On May 24, 1828, the "tariff of abominations" was agreed to. This was the signal for action on the part of the South Carolina leaders. Shortly after the passage of the act, all the members of the South Carolina delegation, except Senator Smith, met at Senator Hayne's to consult as to the course they should pursue. Hamilton was for acting promptly: the proper thing, he thought, was for the delegation to vacate their seats, and not to return unless specially instructed by their constituents so to do. As the State was laboring under taxation without representation, the form of representation might as well be dispensed with. He had resolved to take the step himself the moment the question was settled, to address a letter to the Speaker, and vacate his seat, but had been prevented from doing so by Hayne, McDuffie, Martin, and Drayton.

Conference of
the South
Carolina
delegation.

It was distinctly asserted at this meeting that a continuation of the prohibitory system would lead to a dissolution of the Union. A long and ardent conversation followed on the question of the ability of

Confidence.

the State to sustain herself in such a contingency. Hamilton thought the idea that the general government could enforce an unconstitutional law at the point of the bayonet too absurd for contradiction. The adjoining States would not permit the recruits from the power-looms to march through their territories. He had faith in the spirit of his people, and believed that, if South Carolina were invaded, the victories of the 10th of June, Eutaw and Cowpens, would be re-enacted on a larger scale. Hamilton added, however, that these remarks were not intended to set forth the propriety of separation. McDuffie applauded these sentiments, and said that his constituents would have to get another Representative, if they failed to resist the tendencies that would make them paupers. The delegation agreed to correspond with one another, after they returned home, to acquaint one another with the views of their constituents, to meet in Columbia so as to give any advice the Legislature might desire, to allay excitement till after the election, and then to let opinion take its course.¹

The Walterborough address.

But the excitement was not easy to allay. The passage of the act of 1828 produced an outburst of feeling in the masses like that caused by the passage of the acts of 1824 and 1832. At Walterborough, Colleton County, a meeting was held on June 12, 1828, at which Robert Barnwell Smith (Rhett) submitted for adoption an address to the people of South Carolina. The document declared that resistance to the tariff was advised, "not from a desire of disunion," but to bring back the Constitution to its original principles. Appeal to the courts, it declared, would be in vain: the decision of every court in the land upholding the constitutionality of the tariff could not convince the

¹ *Niles Register*, XXXV. 199-209.

understandings of the people of Colleton County. This address was adopted unanimously,¹ and the Governor was enjoined to convene the Legislature in order that some definite action might be taken.² Meetings held at other places made the same demand, but Governor Taylor was firm: the Legislature was allowed to stand adjourned till the regular day of meeting.

In the mean time, a second attempt to formulate a constitutional doctrine of resistance was made. On July 3, 1828, appeared in the *Mercury* the first of a series of three communications from "Sidney." This writer did not come to the point in his first communication; he was laboring under excitement. South Carolina was paying one hundred thousand dollars tribute that a "miserable, plundering band of grovelling, sordid wretches" might fatten at her expense. Well might her people inquire as to the value of Union with such men. They should take their stand under the sovereignty of the State, "and, if necessary, die in the ditch." On the 4th, the second communication appeared; and on the 8th, the third. The Legislature, it was suggested, should meet, enumerate the different tariff acts, declare them null and void, open the ports, and face the question like freemen. Merchants could then refuse to pay duties; suits would come before the courts, which would declare the law unconstitutional; and thus a plain issue would be made up between two sovereign parties. One sovereign in its delegated powers declares something to be law; another in its reserved powers declares it to be no law: who is to decide? Not the Supreme Court: it is the creature of one of the sovereigns. Only the power that made the Constitution can construe it. South Carolina, standing upon her sovereignty, could declare the tariff

Second
formulation of
nullification.

A plain issue.

¹ *Charleston Mercury*, June 18, 1828.

² *Ibid.*

Three fourths
doctrine.

laws null and void, remain passive, and compel the general government to move. This brings the subject before the States. If South Carolina has one fourth on her side, she is safe. Three fourths must declare to the contrary. If the majority attempt to enforce what is not law, then the cause of the minority would be a glorious one.¹

Governor
Taylor
advises "In-
terposition."

This communication appeared about one week before Calhoun put the finishing touches on the "Exposition." "Sidney" may have been one of those who visited Calhoun at his summer home, and discussed with him the ultimate measures that the State should adopt. When the Legislature met in regular session, in the latter part of November, expectation was on tip-toe. Everybody thought something would be done; only a few knew what course would be taken. Governor Taylor, in his message, after denouncing the "tariff of abominations," proceeded to consider how redress might be obtained. He advised the Legislature to declare the act unconstitutional and in its judgment not binding on the citizens of South Carolina, to publish the declaration far and wide, to appropriate money to test the question before every tribunal known to the Constitution and to the law, and to invite other States to do the same. The jury-box and the ballot-box, what could they not do! He would not even fear to approach the Supreme Court of the United States.

Question of
a tribunal.

"The Constitution created this third power as a check upon the Executive and Legislative branches of the government, with the high office of umpirage between the Sovereign States of which the Union is composed." It would be humiliating to suppose that it could only register the behests of the co-ordinate branches of the government. He would oppose any

¹ *Charleston Mercury*, July 3, 4, 8, 1828.

plan that would not be taken up by other suffering States, or that would excite the hostile feelings of any State in the Union. "Whether the remedies proposed, or such others of a like character as your wisdom may devise, are competent to remove the grievances of which we complain; whether this question has arrived at that stage in which it becomes one of those great and extraordinary cases in which all the forms of the Constitution prove ineffectual against infractions dangerous to the essential rights of the parties to it — and whether the crisis has yet arrived when the sovereign power of the people of the State of South Carolina is called upon to judge in the last resort if the 'bargain made in the formation of the Constitution has been pursued or disregarded,' will no doubt receive from you that profound and deliberate consideration due to their magnitude and importance." ¹

Responsibility shifted to the Legislature.

Governor Taylor's message might as well not have been written. The action of the Legislature had practically been decided for it by the committee of seven,² which had been appointed at the session of 1827. The resolution,³ which indicated the direction the work of the committee was to take, has little in common with the report which the committee submitted. The resolution, like the proposition which, as we have just seen, Governor Taylor submitted in his message of 1828, truly breathed the spirit of the Virginia and Kentucky Resolutions. The report which the committee submitted was the doctrine of nullification, fresh from the pen of John C. Calhoun.

Legislature decided.

Calhoun's connection with the proceedings of the Legislature came about in this way. In the summer and autumn of 1828, the period of excitement following

¹ *Niles Register*, XXXV. 274, 275.

² Calhoun, *Works*, VI. 1.

³ *Ibid.*

The Fort Hill
interviews.

the passage of the act of 1828, many leading citizens of the State visited Calhoun at his residence to get his views as to the remedies that should be adopted. Unfortunately, we have neither the letters nor the diary of any man who took part in those conversations, but we know that Calhoun freely stated his opinions, and advised preparations for the worst. The passage of the act of 1828 opened his eyes to the full extent of the danger of the protective system and to the possibility of failing to secure the desired reform through the election of Jackson. This event he regarded as certain, but he thought that the part Jackson's supporters had played made it doubtful whether any relief could be looked for in that direction. James Hamilton shared this feeling with Calhoun. In a speech to his constituents at Walterborough, October 21, where he had gone directly from the mountains, probably fresh from communion with Calhoun, Hamilton lamented the fact that "the venerable patriot who will go into office 'by all our wishes blest' must remain, in spite of his devoted patriotism and Roman honesty, a passive spectator of the conflict."¹ Calhoun therefore thought it necessary to seek some ultimate and more certain measure of security. This is the time when he turned to the Constitution for a remedy, and "directed a more diligent and careful scrutiny into its provisions, in order to ascertain fully the nature and character of our political system."²

Calhoun
seeks a
remedy.

¹ It was in this speech of Hamilton's that the doctrine of nullification was first proclaimed to the people from the stump. This is the speech which Sargent, in his *Public Men and Events*, and Professor Sumner, in his *Life of Andrew Jackson*, refer to, and which they erroneously place in the fall of 1827. — Speech at dinner given by his constituents of Colleton County, in collection of "Tariff Discussions," Pamphlet No. 14, in Harvard College Library (Library No. VI. 4706).

² Speech on the Force Bill: *Works*, II. 396, 397. See above, p. 26.

Among the leading men who visited Calhoun that summer and autumn was William C. Preston, a member of the committee of seven. Preston asked Calhoun to give him his views on the questions before the committee. This Calhoun did, without hesitation; and he was then asked to prepare a report for the committee. The result was the famous "Exposition of 1828."

Calhoun
and the
"Exposition
of 1828."

Calhoun's connection with this report was not known for some time; and the fact that he approved of the doctrine was not generally understood till several years later. As late as 1830 Judge Richardson could say: "If I understand aught, not one of our great statesmen has said that the constitutional right to nullify a federal law is clear; and that this is the time for the people to practise it. Whatever obscure rumor there may be on the subject, we cannot trace the principle to any direct sanction of our esteemed Vice-President."¹ The very natural disinclination of the Legislature to have it known that outside aid had been called in, Calhoun's sense of the impropriety of lending the countenance of the Vice-Presidency at this time to a party in conflict with the general government, and, probably, a desire not to damage his chances for the succession to the Presidency, may be assigned as reasons for the fact that Calhoun's connection with the proceeding was for a time kept a secret.

It will be convenient at this stage to state once for all the doctrine of nullification as it was outlined in the "Exposition." It would not be possible to describe the forms the doctrine was made to assume by its different expounders. Many who undertook to explain it only fell into hopeless confusions and inconsistencies. It is no wonder that they did so, when such

Different
statements of
nullification.

¹ J. S. Richardson, *An Address to the People: Camden Journal*, 1830.

Nullification
a creature of
circumstances.

men as Hayne and Hamilton failed at first to get a thorough mastery of it.¹ Nullification, as Senator Smith remarked, was very much a creature of circumstances; it required time even for able men to perceive its import. "Nullification assumes a new character and a new remedy according to the orator who declaims it. Chancellor Harper leaves the remedy to the native powers of the Constitution. . . . Governor Hamilton tells us we are to find an effectual remedy in the verdict of a jury. And yet each method is perfectly constitutional. McDuffie, in his dinner speech, comes to the point at once. He says: 'I will readily concede that a State cannot nullify an act of Congress by virtue of any power derived from the Constitution. It would be a perfect solecism to suppose any such powers were conferred by the Constitution. This right flows from a higher source. All that I claim for the State in this respect necessarily flows from the mere fact of sovereignty.'"² Reference will be made at a later stage to the confusion into which the South Carolina Legislature and Hayne and others fell when the fundamental principles of the doctrine were under consideration. Calhoun and Chancellor Harper were the two masters of the subject. They were pre-eminently the expounders; and it is as an expounder, and as little else, that Calhoun figures in the controversy. He was not the originator of the doctrine, and he played scarcely any part as an actor in front of the scenes up to January, 1833.

Calhoun and
Harper the
expounders.

Before proceeding to outline the doctrine, a word must be said about a document which contains the most elaborate statement of nullification. This is Calhoun's remarkable public letter to Hamilton. Hamilton had written from Pendleton, July 31, 1832, telling

¹ See below, pages 94, 95.

² Senator Smith at Spartanburg, August 1, 1831. For McDuffie's speech see *Charleston Mercury*, May 25, 1831.

Calhoun that he had just read a communication sent by him, in the summer of 1831, to the editor of the Pendleton Messenger. He felt satisfied, he said, from a remark of Calhoun's in the communication, and from the degree of condensation, that "there were still a variety of lights in which the truth and vital importance of this highly conservative principle to the liberties of the state were familiar to the reflections" of Calhoun. Would Calhoun fill out the argument and go more into the detail both of the principles and the consequences of the doctrine? Calhoun replied from Fort Hill, August 28, 1832, in a manner that completely satisfied Hamilton, who then asked permission to make the letter public. He had "risen from its perusal with a vastly augmented confidence in the truth and importance of the doctrines we believe and are ready to maintain." Calhoun readily gave his consent. His only fear was that Hamilton had over-estimated the importance of his views. "As to the responsibility necessarily incurred in giving publicity to doctrines which a large portion of the community will probably consider new and dangerous, I feel none. I have too deep a conviction of their truth and vital importance to the Constitution, the Union, and the liberty of these States, to have the least uneasiness on the point."¹

Calhoun's
letter to
Hamilton.

Calhoun's
deep con-
viction.

The doctrine, as Calhoun unfolded it, is substan-

¹ "Important Correspondence on the subject of State Interpretation between his Excellency Governor Hamilton and Hon. John C. Calhoun, Vice-President of the United States, copied by the Pendleton Messenger, 15th September, 1832." (Boston Athenæum Library, No. B 1065, No. 13.) Calhoun had brooded over his doctrine so long that, as Hugh S. Legaré wrote, Nullification had become with him "what the French call an *idée fixe*, — a monomania; in short, he is *quoad hoc*, stark mad, just as H. [Hamilton] and perhaps one or two more of their leaders. It is really lamentable to think that Calhoun's pre-eminent abilities as a politician have been so woefully applied." Legaré, *Writings*, I. 217.

Calhoun's
principle.

tially as follows: "The great and leading principle is, that the general government emanated from the people of the several States, forming distinct political communities, and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community; that the Constitution of the United States is, in fact, a compact, to which each State is a party, in the character already described; and that the several States, or parties, have a right to judge of its infractions; and in case of a deliberate, palpable, and dangerous exercise of power not delegated, they have the right, in the last resort (to use the language of the Virginia Resolutions) '*to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them.*'" The general government is only the joint agent of two distinct sovereignties. The people of each State, through their state government, exercise separately the powers reserved by the Constitution; and through the general government they exercise jointly with the people of every other State the powers delegated.¹ The Union is a union of States as communities, and not a union of individuals. There is, in fact, no direct and immediate connection between the individual citizens of the several States and the general government.² Should a conflict arise between the joint agent and one of the sovereigns, it follows that the power which created the joint agent may be invoked. The States themselves, three fourths of which form a power whose decrees are the Constitution itself, may be appealed to.

Calhoun's
first in-
terference.

How to exercise the power of interpretation a State alone can decide. The spirit of forbearance, as well as the nature of the right itself, forbids a recourse

¹ Calhoun, *Works*, VI. 60.

² *Ibid.*, 148.

to any measure, except in case of dangerous infractions of the Constitution, and then only when all reasonable hope of redress through the ordinary channel has failed. But if, in the opinion of the State, matters have come to such a pass, it would be competent for her, in her sovereign capacity, in a convention specially called for the purpose, to declare the acts complained of null and void, and not binding upon her citizens. The practical effect of this step would be to compel the general government to pause, afford an interval for compromising the difficulty, or to submit the question at issue to the principals themselves.¹ This is the utmost extent of the power claimed for a single State. If on appeal to the principals in convention assembled three fourths of them decide in favor of the agent, a disputed power will be converted into an expressly granted power, and it will be the duty of the aggrieved State to submit, or secede.

Calhoun
on manner
of exercise.

Three fourths
doctrine.

It is objected that this course would make it possible for one fourth of the States to change the Constitution, and thus take away powers which have been granted.² The objection is specious. "The right of the State is not to resume delegated powers, but to prevent the reserved powers from being assumed by the government." The right may be abused; delegated powers may be resumed, but the danger cannot be avoided without creating a greater and opposing danger. The denial of the right to the State would yield to the general government authority to assume all reserved powers at pleasure. It is a question of a choice of evils. Conceding the right to the State would be the lesser evil, for the great number of people by whom it would be exercised, the solemnity of the mode, the delay, the deliberation, would be conducive to calm

Objections
examined by
Calhoun.

¹ Calhoun, *Works*, VI. 160.

² *Ibid.*, 177.

investigation and decision. The strong influence of public opinion outside the State, the influence of public men aspiring to national office, the pressure of adverse local feeling, would render the right free from danger. And if the right were known to exist, there would be less likelihood of an occasion for its exercise: moderation would characterize the general government in employing doubtful powers.

Calhoun on
inference.

It constitutes no valid objection to the right that it rests on mere inference from the Constitution.¹ It rests on inference, but inference so clear "that no express provision could render it more certain. The Constitution professes to enumerate the powers assigned to the general government; the powers of the States are reserved in general terms. It may constitute a presumption against the former that a power claimed is not enumerated, but that a power claimed by the latter is omitted, raises not the slightest presumption against its existence. . . . Like all other reserved rights, it is not to be inferred from the simple fact that it is not delegated, as is clearly the case in this instance."² To concede to the Judiciary the right to determine the line between reserved and delegated powers would be to confide the right to the majority, whose creature the Judiciary is. The discretion of the majority, or of the general government representing the majority, and not the Constitution, would become the measure of powers. The powers of the Supreme Court are judicial, and not political. Of the powers that have been delegated, that Court may, when occasion arises, say which belong to this department of the general government, and which to that; but it cannot go beyond this, and say what powers are reserved and what are delegated.³

Powers of
the Supreme
Court.

If the State, acting upon its clear right to protect its

¹ *Works*, VI. 45, 46.

² *Ibid.*, 69.

³ *Ibid.*, 162.

citizens, declare any act null and void, it could legally and peaceably enforce its declaration, while it would be impossible for the general government to take any legal step to carry its act into execution. Resort to the courts of the State would be useless unless jury trials could be avoided. Appeal to the Supreme Court would avail nothing. A copy of the record is requisite to review the judgment of a state court, and the State could devise means for withholding the copy. But if obtained, it would avail nothing against the penal enactment of the State.

Calhoun's
peaceful
measure.

"Beaten before the courts, the government would be compelled to abandon its unconstitutional pretensions, or resort to force."¹ Such resort would be folly and madness. There would be no law resisted, unless failure to render judgment for the government is resistance; no armed force to reduce; no insurrection to suppress; nobody against whom force could be employed; no one would be guilty of treason or any crime under the Constitution. "There are only two methods of coercion resorted to by water, — blockade and abolition of ports of entry." The former presupposes a state of war, and would not be respected unless war in due form were declared. The latter directly violates the constitutional provision against giving preference to the ports of one State over those of another. The conflict, in short, must be constitutional, — a moral contest, not a contest of brute force.

No coercion.

¹ Calhoun, *Works*, VI. 163.

CHAPTER VI.

PROGRESS OF NULLIFICATION SENTIMENT.

1828-1832.

"Exposition"
circulated.

WITH the adoption by the South Carolina Legislature, in December, 1828, of the "Exposition," reported by the committee of seven, the struggle in the State between the Union men and the nullifiers began in earnest. The "Exposition" was printed and appeared in pamphlet form early in 1829. The Legislature took no further step at this session; but the pamphlet was scattered throughout the State by the nullifiers, furnishing, of course, topics for endless discussions in private and in public meetings. The nullification element gained ground steadily through 1829, and thereafter more rapidly; by 1830 it had almost secured the ascendancy.

National
interest.

The sounds of the struggle that had begun were heard beyond the borders of the State. Some expressions that bore with them no love for the Union had been carried to the ears of the statesmen at Washington; and one Senator, not the least in ability and courage, thought it time to direct public attention to the quarter whence they came, and to do what in him lay to strengthen the defences of the Union. It has been customary to state that the great nullification debate of 1830 came on in the Senate by accident; but perhaps deeper investigation may show that the issue was sought by Webster, and that due preparation was made.

On the 29th of December, 1829, Senator Foot, of Connecticut, offered in the Senate a very harmless

looking resolution relating to the sale of public lands.¹ Senator Benton detected in this resolution a design to check immigration to the West, "an old and favorite policy with some politicians."² The Senator from Connecticut might shake his head, but he could not shake the conviction out of Benton's mind that a check to Western immigration was intended. Benton could trace through forty-four years measures to check immigration. "It was time to arrest them, . . . to face about; and to fight a decisive battle in behalf of the West. . . . The young West had been saved from an attempt to strangle it in the cradle, forty years ago, by Virginia and the South." He would ask the Senate to wait till the Virginia Senators, then absent, returned, so that their assistance might once more be had. The Senate waited.

Foot's
resolution.

The resolution actually came up for discussion on Wednesday, January 13, 1830, on which day an interesting debate took place. On Monday, the 18th, the discussion was resumed, and Benton proceeded to make a set speech. He again denounced the East for hostility to the West, and made the specific charge that the East was anxious to depress the southern interest, and to prevent it from predominating there; the West might be too weak to defend herself, but she knew where to look for help. On the following day, January 19, Hayne for the first time joined in the discussion.³ Dismissing with a few words the propriety of instituting the proposed inquiry, he passed to the more important

Benton and
Hayne.

¹ "Resolved, that the Committee on Public Lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale and are subject to entry at the minimum price. And, also, whether the office of Surveyor General may not be abolished without detriment to the public interest." — *Congressional Debates*, 21 Cong., 1 sess., 3 (1829-30).

² *Ibid.*, 4-24.

³ *Ibid.*, 31-35.

question, "the policy which ought to be pursued in relation to the public lands." He distrusted the purpose of creating a great national treasury. It would be a fund for corruption, destructive to the purity and fatal to the duration of our institutions; "It would be equally fatal to the sovereignty and independence of the States." He was one of those who believed that the very life of our system was the independence of the States, and that there was "no evil more to be deprecated than the consolidation of this government." This was the sentence that gave offence.

Webster's
attack.

Next day, January 20, Webster stood up, and, pointedly turning entirely aside from Benton's direct and vigorous attack on the East, began his first speech incited by Hayne. The South Carolinian had been very moderate in his remarks. In his sentiments there was little to surprise Webster greatly; and the only apparent reason for not confining his observations to the sectional issue raised by Benton was the design to strike a blow over Hayne's head at the agitators in South Carolina. "I know that there are some persons in the part of the country from which the honorable member comes who habitually speak of the Union in terms of indifference, or even of disparagement. . . . They significantly declare that it is time to calculate the value of the Union; and their aim seems to be to enumerate and to magnify all the evils, real or imaginary, which the government under the Union produces. The tendency of all these ideas and sentiments is obviously to bring the Union into discussion as a mere question of temporary expediency; nothing more than a mere question of profit and loss." Webster may have wished merely to draw Hayne out, and to learn whether he shared such sentiments. "The honorable member is not, I trust, and can never be, one of these."¹

¹ *Congressional Debates*, 21 Cong., 1 sess., 35-41 (1829-30).

By such shrewd remarks Webster accomplished a double object: he dealt a blow at the malcontents in South Carolina, and at the same time forced Hayne to commit himself. On Webster, therefore, rests the responsibility for precipitating the controversy at that time in the Senate; he knew what he meant to say, and he desired a fit opportunity to say it. Much has been written about Webster's second speech, the familiar "Reply to Hayne"; the conventional statement is that the general line of argument had long been familiar to him, and that he had only to clothe his thoughts in words. But the speech contains evidence that he had made a recent careful and detailed examination of the nullification doctrine. Doubtless his long experience in Congress and at the bar had familiarized him with all general questions relating to the formation and nature of the Union; but whence did he come by his evident familiarity with the nullification doctrine in its minutest details? He certainly did not hear it in Hayne's second speech, to which his great reply is supposed to have been made; Hayne had not attempted an elaboration of the doctrine, but had limited himself to stating it and supporting it with quotations from the Virginia and Kentucky Resolutions, and from Madison and Jefferson. Only in the last paragraph did Hayne stop quoting authorities, and emphasize the intolerable condition that would result from the acceptance of the principle that the federal government should be the final arbiter. Webster's reply was really not directed against Hayne, but against Calhoun, or rather against the ideas expressed in the latter's "Exposition" of 1828. That document had been laid before Congress, and, as already stated, had been spread abroad. Webster referred specifically to this South Carolina doctrine of 1828, and his argument follows the lines of its development.

"Great Reply" premeditated.

Against Calhoun.

Whatever may have been Webster's original plan,

Hayne
aroused.

he certainly succeeded in drawing out Hayne, who was eager to defend his friends and his State.¹ On Thursday, January 21, 1830, the subject was resumed, and a request was made for postponement till Monday, so that Webster could be present. Hayne saw Webster in his seat and hoped the debate would proceed at once, so that he might reply to certain observations in Webster's speech of the 19th. "He would not deny that some things had fallen from that gentleman which rankled here [touching his breast] from which he would desire at once to relieve himself. The gentleman had discharged his fire in the face of the Senate. He hoped he would now afford him an opportunity of returning it." Webster was not less dramatic, as, with folded arms, he replied: "I am ready to receive it. Let the discussion proceed." Benton rose and spoke for an hour, and then gave way to Hayne, who occupied the time till adjournment.

Hayne's
qualities.

By Monday, the 25th, the day on which the discussion was resumed, the news had spread that a great struggle was in progress in the Senate, and crowds had gathered to witness it. Both Webster and Hayne stood high in the estimation of the public. Both were in their prime. They had few characteristics in common, except great ability and lofty character. Hayne²

¹ *Congressional Debates*, 21 Cong., 1 sess., 41-43 (1829-30).

² Hayne was born in St. Paul's Parish, South Carolina, Nov. 10, 1791. He studied law under Langdon Cheves; was elected to the Legislature when he was only twenty-three; and at twenty-five was elevated to the Speakership. After serving for some time as Attorney General, he was sent, in 1822, to the United States Senate to succeed Senator William Smith. He was the youngest man who had ever represented his State there; in fact, he was barely qualified in point of age. He succeeded James Hamilton, Jr., as Governor in 1832; became Intendant of Charleston in 1835, and President of the Louisville, Cincinnati, and Charleston Railroad Company in 1836; and died in Asheville, N. C., of fever contracted

was high-minded, courteous, frank, and sincere; his oratory was impassioned and persuasive, his voice clear and distinct. As McDuffie said of him, he nearly produced a disposition to be convinced before he began his argument. In his greatest efforts, however, there was always more rhetoric than close logical argument. He could move his audience deeply, but the impression was not likely to be permanent. The best speech of his life was probably that made on this day; but it falls far below that of his rival in expression, in construction, and in sweep of sentiment. It was happy and eloquent, but lacked the essentials of greatness. Webster, if not so graceful as Hayne, and not quite so likely to win good will at sight, was certainly a more striking figure, with his abundant black hair, his superb brow, and his dark, piercing, deep-set eyes. He could command attention and admiration at once, whether he won affection or not. It would be a waste of time to attempt a description of his oratory; too many others have failed to do it justice.

Hayne and
Webster.

Hayne¹ began by protesting that he had not expected to meet such arguments as had been urged by the Senator from Massachusetts; he had questioned no man's opinions, impeached no man's motives, and had charged no party, State, or section with hostility to any other. The Senator from Massachusetts, after deliberating a whole night, had come into the chamber to vindicate New England, and, instead of making up his issue with the Senator from Missouri, "selects me as his adversary, and pours out all the vials of his

Hayne's
opening.

while on his way there to attend a convention of his company. See McDuffie's Eulogy on Hayne, 1840, Pamphlet in Harvard College Library (Library No. 7392.65); O'Neill, *Bench and Bar of South Carolina*, II. 11-33.

¹ For the speech, see *Congressional Debates*, 21 Cong., 1 sess., 43-50 (1829-30).

Hayne's
authorities.

mighty wrath on my devoted head. Nor is he willing to stop there. He goes on to assail the institutions and policy of the South, and calls in question the principles and conduct of the state which I have the honor to represent." With even pace, with smooth, well rounded sentences, Hayne touched upon the various topics that had been suggested. For the first time he turned his attention to the sectional issue,—it would have been better for his reputation if he had not done so. "By way of defending South Carolina from what he thinks an attack upon her, he first quotes the example of Massachusetts, and then denounces that example in good set terms."¹ From this point Hayne labored rather hard till he entered upon the defence of those principles of his friends and of his State to which Webster had referred. Webster had not condescended to examine the question, but had simply thrown the weight of his great authority into the scale against it. Hayne did not attempt any formal or elaborate statement of the doctrine of nullification, but merely threw into the opposite scale the authorities upon which his State relied,—the Virginia and Kentucky Resolutions, Jefferson, and Madison. Hayne closed at four o'clock; Webster rose to reply, but yielded to a motion to adjourn.

Public
interest.

On Tuesday and Wednesday, January 26 and 27, Webster replied. The Senate Chamber was crowded; the House of Representatives was nearly deserted; movement on the floor of the Senate was almost impossible; in the rear of the Vice President's chair the pressure was especially great, due in no small degree to the presence there of Dixon H. Lewis, the weighty Congressman from Alabama.² The excitement ran high;

¹ Webster: *Congressional Debates*, 21 Cong., 1 sess., 72 (1829-30).

² He is said to have weighed 500 pounds.

feeling was intense; but Webster's first sentence put the audience at ease.

Webster's great speech is too familiar to call for extended notice; his magnificent exordium, his parrying of Hayne's thrusts are well known. For our purposes what is important is his discussion of the doctrine of nullification. Expressing great respect for the constitutional opinions of Madison, he contended that a wrong construction had been put upon them by South Carolina. He admitted the right of revolution, but would not concede that under the Constitution, and in conformity with it, there was any mode by which a State government, as a member of the Union, could interfere and stop the progress of the general government "by force of her own laws under any circumstances whatever." This led him to inquire into the origin of the government. Was it the creature of the State Legislatures or of the people? "It is, sir, the people's Constitution, the people's government; made for the people, made by the people, and answerable to the people.¹ . . . We are all agents of the same supreme power, the people. The general government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary."

Webster's
reply.

"The People's
Constitution."

In cases of conflict, who will be the arbiter? "If there be no power to settle such questions independent of either of the States, is not the whole Union a rope of sand?" Would not the country be thrown back again precisely upon the old Confederation? "It is too plain to be argued: four and twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind anybody else, and

The arbiter.

¹ This clause probably suggested Lincoln's famous sentence in his Gettysburg address.

Provisions
in the Con-
stitution.

this constitutional law to be the only bond of union." Would the Senator admit that the New England States would have been justified in interfering to break up the Embargo? Could they have allowed it? Methods of relief had been provided, as Webster pointed out, in the Judiciary, in frequent elections, and in the power of amendment. "If, sir, the people in these respects had done otherwise than they have done, their Constitution could neither have been preserved, nor would it have been worth preserving." It might be admitted that the right of judging should not have been lodged with the general government, but the question was whether the right had not been so lodged. If there were fears, there were also hopes. The people had preserved their Constitution for forty years, had "seen their happiness, prosperity, and renown grow with its growth, and strengthen with its strength. . . . Overthrown by direct assault, it cannot be; evaded, undermined, nullified, it will not be, if we, and those who shall succeed us here as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust, faithfully to preserve and wisely to administer it."¹

Hayne's
rejoinder.

When Webster sat down, Hayne² began his second rejoinder. It is not necessary for us to follow him over the familiar ground; he added nothing to Calhoun's "Exposition" of 1828, except an element of confusion.³

¹ For the speech, see *Congressional Debates*, 21 Cong., 1 sess., 58-80 (1829-30).

² *Congressional Debates*, 21 Cong., 1 sess., 82 *et seq.* (1829-30).

³ *Ibid.*, 92, 93. In restating his view of the origin of the government, Hayne used the following language: "Here, then, is a case of compact between sovereigns, and the question arises, What is the remedy for a clear violation of its express terms by one of the parties? And here the plain, obvious dictate of common sense is in strict conformity with the understanding of mankind, and the practice of nations in all analogous cases: 'that,

Webster closed the day's debate in a third speech, remarkable for its compactness, exposing the weak places in Hayne's rejoinder, and giving a masterly summary of his own views. The debate dragged on for about a month, Benson, Clayton, Woodbury, Grundy, Livingston, Smith, and others joining in; but, so far as the record shows, the resolution out of which the discussion had grown was never brought to vote.

Webster's
summary.

The speeches of both Hayne and Webster were well received, especially by their respective sympathizers. In South Carolina, Hayne's rejoinder was distributed as "a complete answer." A contemporary,¹ indulging his imagination perhaps too freely, tells us that after the delivery of Hayne's speech a Southerner could be detected by his buoyant, joyous expression and confident air; the Yankee, by his timid, anxious eye and depressed bearing. Benton could scarcely find words to express his praises. "Much as he [Hayne] had done before to establish his reputation as an orator, a statesman, a patriot, and a gallant son of the South, the efforts of these days eclipse and surpass the whole. They will be an era in his senatorial career which his friends and his country will remark and remember, and look back upon with pride and exultation."² The reports of

Effect of
the debate.

where a resort can be had to no common superior, the parties to the compact must themselves be the rightful judges whether the bargain has been pursued or violated.' (Madison's Report, p. 20.) When it is insisted by the gentleman that one of the parties (the Federal Government) 'has the power of deciding ultimately and conclusively upon the extent of its own authority,' I ask for the grant of such power. . . . If it is to be inferred from the nature of the compact, I aver that not a single argument can be urged in favor of the Federal Government, which would not apply with at least equal force in favor of a state." *Ibid.*, 86. See Webster's remarks on this position, *Ibid.*, 92.

¹ Charles W. March, *Reminiscences of Congress*, 118 *et seq.*

² *Congressional Debates*, 21 Cong., 1 sess., 118 (1829-30).

Webster's speech were read with eagerness. He had done for the men of the national party what Calhoun had done in his "Exposition" for the men of the State Rights party; he had formulated their views in a masterly argument, and through his boldness had given them renewed courage and confidence. We are told that the "New England men walked down the streets that day with a firmer, bolder air. You would have sworn they were some inches taller. They devoured the way in their stride. Their elation knew no limits. Every one was ready to exclaim, 'Thank God, I too am a Yankee!'"¹

Was Webster
on new
ground?

It has been said that the ground which Webster took in this debate was new, while that of Hayne was old; that Webster's position was one toward which the greater part of the nation was steadily advancing, while Hayne's was one upon which the South was presently to stand quite alone; that the political and economic condition of the North had advanced, and with it public opinion, while politically and economically the South had remained the same, and opinion had also remained stationary.² This judgment hardly represents the situation correctly. The North had undoubtedly advanced, but the South, or rather South Carolina, had not stood still; she had retrograded. She had kept up with the progressive forces till 1820, had in fact kept in the very front rank; but about that time she called a halt, and finally obstructed the way. The principles on which Hayne based his argument in 1830 were old in one sense; in fact, they had died of old age in 1789, and were buried under the Constitution. Hayne now unearthed the mummy, and held it up to frighten the nation.

Had the
South stood
still?

The issue had thus been joined and practically fought

¹ Charles W. March, *Reminiscences of Congress*, 149.

² Woodrow Wilson, *Division and Reunion*, 47.

out in the legislative body. But it was not the legislative so much as the executive which just at that time disturbed the nullifiers. The question was, What would Jackson do? Would he sympathize with them or not? The nullifiers were not long in finding out how little ground there was for their confident expectations. Jefferson's birthday was to be celebrated on the 15th of April, 1830; and for that occasion a dinner was arranged by the State Rights element, to which Jackson was invited. If the object of the meeting was to draw Jackson out, it did not fail. Toasts were called for and Jackson promptly responded with: "The Federal Union;—it must be preserved." Calhoun had his wits about him; when called upon, he gave with feeling the appropriate sentiment: "The Union,—next to our liberty most dear. May we all remember that it can only be preserved by respecting the rights of the states and distributing equally the benefit and the burthen of the Union." This incident became known to the leaders of both elements in South Carolina, but the State Rights leaders insisted on taking Jackson's sentiment in a "Pickwickian sense." With unaccountable obtuseness, they insisted that Jackson meant that the Union was to be preserved along the lines that Calhoun had indicated in his sentiment.¹ In fact, during the agitation in the summer of 1830, intended to arouse the sentiment of the State in favor of calling a State Convention, the nullifiers went so far as to represent that the Union party was acting contrary to the President's wishes;² and this representation was the more readily accepted because of the opinion that prevailed as to the President's views in general.

Jackson
sounded.

"It must be
preserved."

¹ See *Proceedings of the Celebration of the Fourth of July, 1831, at Charleston, S. C., by the State Rights and Free Trade Party*, p. 27, in Harvard College Library (Library No. 12354.58).

² C. J. Stillé, *Life and Services of Joel R. Poinsett*, 1888, p. 57.

Movement
to call a
convention.

The movement to call a convention to nullify the tariff laws showed much strength in the election of 1830, and was held in check only with great difficulty.¹ The election of members to the Legislature turned upon that issue, and, when the Legislature assembled, reports favoring a convention were presented in both Houses. The cause of the general government was ably advocated by Judge Daniel E. Huger, Jr., P. Richardson, William M. Willie, T. R. English, and others.² Every point was discussed with moderation, — the attitude of the President, the operation of the tariff, the nature of the government, and the questions of secession and nullification. It was declared that a State Convention could not nullify or arrest the execution of an act of Congress, under either the law of nations or the Constitution of the United States, without running the risk of a national or a civil war of extermination. The opposition was successful in preventing the calling of a convention, and the Legislature contented itself with a set of resolutions compiled from the Kentucky Resolutions of 1798.

Union party
celebration.

After the adjournment of the Legislature, there were no developments of any importance till the summer of 1831. Then occurred an incident which, at last, opened the eyes of the nullifiers to the real attitude of the President. As it happened, each party had determined to take advantage of the Fourth of July to arouse the enthusiasm of its adherents and to attach those who wavered. Monster celebrations were planned in Charleston; each party was bent on making the other appear as insignificant as possible. The Union party probably desired, in addition, to convince the nullifiers once for all that President Jackson would

¹ *Congressional Debates*, 21 Cong., 2 sess., 611 (1830-31).

² *Debate in South Carolina Legislature, December, 1830*. Document in Kennedy Library, Spartanburg, S. C.

not countenance any schemes tending to impair the dignity and authority of the general government; and they made elaborate arrangements accordingly.¹

The morning of the Fourth was ushered in by the firing of cannon, the ringing of bells, and the parade of the militia; and at ten o'clock the party began to assemble between Meeting Street and the Bay. From this point, the procession, several thousand strong, gay with banners and brass bands, moved to the First Presbyterian Church, at the corner of Meeting and Trade Streets, where the first ceremonies of the day were to be held. "The whole formed a sublime and imposing spectacle, the moral grandeur of which it would be difficult to give an adequate idea of in words. It was the spontaneous movement of a vast multitude, assembled in the presence of their God, to sacrifice at the altars of their country, and to vow before Him their unalterable determination to defend her institutions and her laws against the attacks of all her enemies, whether they exist in her own bosom, or come against her from abroad." At the church original odes were sung; Washington's Farewell Address was read by Daniel E. Huger, and was received "with strong and repeated emotions, particularly those parts of the Address which are admonitory as to the causes that may threaten disunion and the attempts that would be made to effect it"; and an oration was delivered by William Drayton. At the close of the ceremonies at the church, the party adjourned to reassemble in the afternoon for the dinner and the speaking.

"Imposing
spectacle."

For the dinner and the speaking, a building covering a space of forty-five feet in width by one hundred and fifty feet in length had been erected at the corner of Meeting and George Streets. "The lot and the building in which the party dined were decorated with a

Union party
dinner.

¹ Capers, *Life and Times of Memminger*, 37-105.

Union
decorations.

taste at once showy and becoming. Festoons of evergreens encircled the pillars, which, though we cannot exactly consider or designate them 'Corinthian columns,' were nevertheless very neat and substantial. The hickory, entwined with the palmetto and the pine, were conspicuous as appropriate emblems in illustrating the pride and strength of our country; and from the archway, one of which being appropriated to each individual, were suspended shields bearing the names of Moultrie, Warren, Lafayette, Manning, Sumpter, Hampton, Lincoln, . . . and many others who had distinguished themselves in the cause of liberty in the fields and on the shores of Carolina. Transparencies of Washington, Hancock, Franklin, and others, encircled with boughs and luxuriant foliage, hung at the upper end of the vast hall. In front of the building the eye was attracted to the novel appearance in our streets of a palmetto and a hickory tree, transplanted in full bloom from the soil in which they originally grew, and waving in that of their adoption as freshly as they ever did before. The front of the building was decorated with two full-rigged frigates, manned and armed, mounting each fifty-two guns, and one rakish-looking and elegant tender, — all perfect models of naval architecture. These were each surmounted by a broad, transparent archway, over the centre of which appeared illuminated the words, 'Don't give up the Ship!' Three other transparencies, allegorical and emblematical, directly beneath the archway, completed the decorations in front."¹ The wines were excellent, and the heat was extreme.

After the dinner came the intellectual repast, the toasts,² — nearly two hundred in number altogether, —

¹ Capers, *Life and Times of Memminger*, 37-44.

² Two of the regular toasts deserve notice: —

"18. State Sovereignty: If one State has the right to change

the speeches, and the letters. The principal speeches were made by Thomas R. Mitchell, Hugh S. Legare, James L. Petigru, and Daniel E. Huger. Those of Legare and Petigru especially deserve attention. Issue was joined with the nullifiers on every point: it was maintained with truth that the past history of the State condemned their proceedings; that the injurious effect of the tariff had been exaggerated;¹ that there was no authority for the doctrine of nullification in the history of the Union or in the law of nations; and that, if the doctrine were pushed to its logical result, civil war would ensue. Letters were read from many prominent men in the State; but they were overshadowed by the letter² which the committee had received from President Jackson in reply to an invitation to be present. This was their big gun, which was expected to carry consternation into the camp of the State Rights and Free Trade party. The committee had reminded the President of the "portentous omens which threatened the State with civil war," and informed him that they conceived it of infinite importance to expose the fatal errors of opinion with which the youth were growing up; and further that it was their aim to "revive in its

Union
speeches.

Jackson's
letter.

the government, the others have a right to prevent it. (Ye Mortals whom fancy and troubles perplex)."

"22. 'Nullification,' 'Secession,' and 'Putting the State on its Sovereignty': Revolution in disguise. (Black Joe)." Capers, *Life and Times of Memminger*, 44.

¹ Petigru went so far as to say: "That the tariff of protecting duties ought never to have been passed; that it is contrary to the spirit of amity and concession in which the Constitution was conceived, and in which the government ought to be executed, I freely admit; that it is injurious to the South, I firmly believe; but that it is unconstitutional, I wholly deny; and that it is ruinous in its operations, is no more than a rhetorical flourish." Capers, *Ibid.*, 61.

² *Ibid.*, 46-48.

full force the benign spirit of Union." Jackson declined the invitation, but sent the letter, which was probably all the committee hoped for. "Every enlightened citizen," the President wrote, "must know that a separation, could it be effected, would begin with civil discord and end in colonial dependence on a foreign power, an obliteration from the list of nations. But he should also see that high and sacred duties, which must and will at all hazards be performed, present an insurmountable barrier to the success of any plan of disorganization, by whatever patriotic name it may be decorated, or whatever high feeling may be arrayed for its support." The letter was read in four different quarters of the assemblage, and was received with enthusiastic cheers.

State Rights
and Free
Trade
celebration.

Rumors of this letter had reached the State Rights and Free Trade party, which was celebrating not far off; but apparently it failed to produce the effect intended. The preparations of this rival body had been, if anything, rather more elaborate than those of the Union party. The preliminary ceremonies of the morning closed with the presentation of a banner by the ladies of Charleston, with the march of a procession including the societies of the Cincinnati, of the Revolution, and of '76, and a body of seamen bearing banners inscribed with stirring sentiments. Then came an oration by Robert Y. Hayne at the Circular Church, "which for cogency of reasoning, purity and elevation of sentiment, and eloquence and impressiveness of delivery, has certainly never been exceeded in this or perhaps in any other city of the Union." At three o'clock the crowd reassembled for the march to the pavilion. This booth, erected at the corner of Meeting Street and South Bay, in the form of a pentagon, and arranged to accommodate over twelve hundred people, was decorated in very much the same manner as the building of the opposing party. Many of the

leading nullifiers of the State were present, Governor James Hamilton, Jr., Senator Hayne, Robert J. Turnbull, Henry L. Pinckney, Judge Colcock, and others. Toasts, regular and irregular, were proposed without number; and long speeches were made by Hamilton, Hayne, Turnbull, and Pinckney. The audience was assured that the nullification remedy would work as smoothly as could be desired; that no bloodshed should follow. Hamilton and Turnbull assured their hearers that the President could not mean what the plain words of his 15th of April sentiment seemed to indicate; for, coercion could not be employed. Hamilton referred to the rumor that there was then a letter in the city from the President expounding his meaning, but he dismissed the subject with a reminder that old Waxsaw still stood where Jackson left it, and that the old stock of '76 had not given out.¹

State Rights
speeches.

Of course before the next day the nullifiers knew that there was good foundation for the rumor which had reached them. The leaders bided their time; they waited for the assembling of the Legislature, and then their wrath broke loose. The Legislature fumed and raved.² Was it to be schooled and rated by the President of the United States? Was it to legislate under the sword of the Commander in Chief? "The Executive of a most limited government, the agent of an agency, but a part of a creature of the States, undertakes to prescribe the line of conduct to a free and sovereign State under denunciation of pains and penalties! It cannot but be esteemed a signal instance of forbearance calmly to inquire into this assumed power of the President over the State." After cooling down a little, the committee reporting proceeded to declare that

The Legis-
lature vs.
Jackson.

¹ *Proceedings of the Celebration of the Fourth of July, 1831, at Charleston, S. C., by the State Rights and Free Trade Party.*

² *South Carolina Laws (1831), Resolutions*, p. 59.

Secession
justified.

each State was sovereign, and might withdraw from the Union whenever it saw fit, and that such action would be neither treason nor insurrection; that whether it could be a cause of war on the part of the general government might be questionable; that the notion was monstrous that the President himself could declare war. The committee further announced that, if the State should declare any enactment of the general government void, her judgment would be paramount, and any attempt to enforce such enactment would be an exercise of the law of tyrants, the exertion of brute force. If such a case should occur, the State would throw herself on Providence, and, if her destiny was to be slavery, she would not be mocked by the forms of a free government.

State Rights
and Free
Trade
convention.

A convention had been held in Columbia in 1831, just before Congress assembled, and when there was hope that Congress would take favorable action on the tariff; but months had passed, and the indications were far from satisfactory. Hence the next step of the nullifiers was to hold a great convention of delegates from all the State Rights and Free Trade associations in the State, "to devise the best means of maintaining the reserved sovereignty of the States and of recovering for the country the lost but inestimable blessings of Free Trade, . . . to consider and measure the best means of diffusing among our people a just knowledge of their rights, . . . of cherishing and invigorating an enlightened public sentiment, . . . of offering up again our pledges that, if the public tranquillity is disturbed, it shall not be of our seeking; and that our only object, with a preservation of the Union of these States, is to maintain those very rights and privileges which union was designed to render perpetual."¹

¹ *The State Rights and Free Trade Convention*, 1832. (Boston Public Library Pamphlet.)

The convention assembled in Charleston, Wednesday, February 22, 1832. Only one district, Pendleton, was unrepresented. One hundred and eighty delegates were enrolled, and Governor Hamilton was elected President. Many men were present who were already, or were soon to be, conspicuous in public life, — Isaac E. Holmes, C. J. Colcock, H. L. Pinckney, Waddy Thompson, Jr., Alexander I. Sims, A. P. Butler, William C. Preston, S. H. Butler, T. D. Singleton, Robert Barnwell Smith (Rhett), Franklin H. Elmore, and James H. Hammond. A committee of thirteen was appointed to prepare an address, and to report at the next meeting, Saturday, the 25th. The committee reviewed the sufferings of the State and the remonstrances that had been made. They would not moot constitutional questions; the argument was exhausted. What was to be done? "*Why, Resist?*" The State had nothing to do but to say on her high authority that her citizens should not pay tribute, and tribute would not be paid. "The State looks to her sons to defend her in whatever form she may choose to proclaim her purpose to *Resist*." They had merely paused to await the decision of Congress. Sanguine expectations of relief from that source were not entertained, and it was agreed on all hands that the decision soon to be made by Congress would be final. The convention unanimously adopted a set of resolutions, recommending the semiannual publication and distribution of tracts, and particularly — since it was important that the people should understand the process by which their burdens might be removed without either secession or revolution — of tracts "explaining and inculcating *nullification* as the legitimate, peaceful, and rightful remedy for all oppressive and dangerous violations of the federal compact."

Leaders.

Resistance
advocated.

CHAPTER VII.

THE ISSUE JOINED. — 1832-1833.

Tariff of
1832.

FOR once the nullifiers had read the signs aright. Congress finished its work; the hoped for relief was not afforded. On the contrary, the act of July 14, 1832, was passed, stripping the act of 1828 of some of its most obnoxious features, it is true, but still not providing for any such reductions as South Carolina thought dictated by justice. Hayne declared in the Senate that he regarded the bill as fixing the protective system upon the country forever, without hope of relief; and that, if it passed, the prosperity of the South, so far as it depended on the general government, would be destroyed. The people of his State had been advised to wait patiently till certain conditions were satisfied, and then, if their demands were not heeded, to take decisive action. The crisis had come: Jackson was in power; the public debt had practically been extinguished; there was no longer any necessity, from a revenue standpoint, for high duties; and yet Congress, instead of lessening the burdens imposed by the tariff, had simply decreed that they should be permanent. At least such was the view of the majority of the people of the State. He declared that action could no longer be delayed.¹

South
Carolina
election.

The elections for the State Legislature were to be held in the fall of the year 1832. Canvassing went on

¹ *Congressional Debates*, 22 Cong., 1 sess., 1217, 1292 (1831-32).

during the summer, the issue being the call of a convention to nullify the tariff laws. The Union men did what they could to stem the tide, but their efforts were unavailing. Their total vote was not very much below that of the nullifiers, but they carried comparatively few districts.¹

Governor Hamilton, seeing how the election had resulted, called the Legislature to meet in extra session on October 22. His message was promptly laid before both Houses. The Governor represented the act of July 14 as a measure under which three fourths of the revenue of the general government would be drawn from the Southern States. Desiring to see the issue made up before the next meeting of Congress, he recommended that the Legislature proceed immediately to call a convention. "As it was by an assembly of identical and equivalent authority that our compact was formed under the Constitution with the co-states, . . . so on no tribunal can more appropriately devolve the high province of declaring the extent of our obligations under this compact." He forbore to suggest what remedy the convention should ordain: it should pass on the whole subject uninfluenced by any official expressions.²

Convention
recommended

With almost no delay, the Legislature carried out the Governor's recommendation. On October 26th it passed a bill for calling the convention, by a vote in the House of 96 to 25, and in the Senate of 31 to 13.³ It was enacted, that a convention of the people "shall be assembled at Columbia, on the third Monday in November next,⁴ then and there to take

Call of the
Nullification
Convention.

¹ Unionists, about 17,000; nullifiers, about 23,000. De Bow, *Political Annals of South Carolina*, 1845, p. 39. Legaré, *Writings*, I. 209.

² *Niles Register*, XLIII. 173.

³ *Ibid.*, 152.

⁴ November 19.

Functions
of the Con-
vention.

Election of
delegates.

into consideration the several acts of the Congress of the United States, imposing duties on foreign imports for the protection of domestic manufacturers, or for other unauthorized objects, to determine on the character thereof, and to devise the means of redress, and further, in like manner, to take into consideration such acts of the said Congress, laying duties on imports, as may be passed in amendment of or substitution for the act or acts aforesaid; and also all other laws and acts of the government of the United States which shall be passed, or done for the purpose of more effectually executing or enforcing the same."¹ It was provided that the delegates should be elected in the same manner as members of the Legislature, each district sending as many delegates as it had Senators and Representatives, and the voting to take place in the same manner and at the same places. Unless sooner dissolved by itself, the convention was to continue twelve months from the day of election, and was to adjourn from time to time if it saw fit.

Unionists.

In the election which followed, the Union men did not exert themselves, since the real struggle had taken place in the fall at the election of members of the Legislature. Consequently, while in the Legislature thirteen Senators and twenty-five Representatives were Unionists, only twenty-six Unionists in all were chosen to sit in the convention. They had carried solidly the important counties of Greenville, Spartanburg, Lancaster, Chesterfield, Darlington, Kershaw, and Clarendon; most of their ablest leaders, such as Drayton and Petigru, had not secured seats, but Benjamin F. Perry, John Belton O'Neill, Daniel E. Huger, and J. S. Richardson were men of high character and of good ability. On the other hand, the nullifiers were

¹ *South Carolina Laws* (1834), Appendix, 47; also *Niles Register*, XLIII. 152.

as conspicuous for ability as for numbers. Of the one hundred and sixty-two delegates actually in attendance, one hundred and thirty-six were nullifiers; and among these were Governor James Hamilton, Jr.; Senators Robert Y. Hayne and Stephen D. Miller; Chancellor and Ex-Senator William Harper; Congressman George McDuffie; future Senators Franklin H. Elmore, William C. Preston and Robert W. Barnwell; and, in addition, Armistead Burt, D. H. Means, C. J. Colcock, and Robert J. Turnbull. Nullifiers.

The convention met on the appointed day in the Hall of the House of Representatives. The convention was in session six days, from Monday, November 19, until Saturday, the 24th. Governor Hamilton¹ was elected Action of the convention.

¹ It is time that an account should be given of this, the most active of all the nullifiers. Hamilton was an actor rather than a counsellor. He was prompt, vigorous, and firm, — a manipulator of parties. He was quick and fluent rather than profound, and was popular with the masses. He was almost as fiery as his life-long friend, John Randolph of Roanoke, with whom during the entire nullification controversy he kept up a constant correspondence. Hamilton was born in Charleston in 1786. He served several terms in the Legislature, and was a member of that body when the negro outbreak occurred in 1822. In that year he was elected to Congress to succeed the lamented William Lowndes. When Jackson was elected President, he desired to invite Hamilton to take a seat in his Cabinet, but indicated that certain persons had taken exception to Hamilton on account of his violent course on the tariff, hoping probably that Hamilton would show a willingness to tone down a little and accept the position; but Hamilton, thanking him for the intended compliment, remarked that he was more highly honored by the ground on which he had been excluded. Hamilton served as Governor from 1830 to 1832. After the close of the nullification controversy, he moved to Texas, and exerted himself to get her independence recognized by foreign nations. He was active in procuring the admission of Texas into the Union, and was rewarded by election to the United States Senate. But apparently he did not take his seat. He was drowned in a collision near the Texas coast, November 15, 1857. Sketch of Hamilton.

Proceedings
of the
convention.

president, and a committee of twenty-one was appointed to take into consideration the call of the Legislature, and to lay out the work of the convention. Very little was done before Thursday, when Hayne, in behalf of the committee, read an elaborate exposition, and Judge Colcock, the chairman of the committee, introduced the Ordinance of nullification. On Friday an address to the people of South Carolina was reported, and later an address to the people of the United States was read by McDuffie. Final action on these reports was postponed till Saturday, when the Ordinance was adopted by a vote of one hundred and thirty-six to twenty-six.¹ While all the proceedings of the convention were serious and dignified, those of the last days were especially sober. The signing of the Ordinance was accompanied with unusual solemnity; the seven old members of the convention who had borne arms in the Revolutionary War were called upon to affix their signatures first; the other members signed alphabetically.²

Ordinance of
nullification.

The Ordinance followed the precedent of the Kentucky Resolutions in declaring all acts imposing duties on foreign commodities, and, in particular, the acts of May 19, 1828, and July 14, 1832, unauthorized by the Constitution, "null, void, and no law, not binding upon this state, its officers or citizens"; to counteract the power of the United States courts, it prohibited appeal to the Supreme Court in cases touching either the authority of the Ordinance, or the validity of acts of the Legislature enforcing it, or of the acts of Congress nullified; to assure the State of the allegiance of its

¹ The Union delegates offered very little opposition to any of the measures; their leaders had counselled silence. Whatever counteraction was necessary was to be taken by the convention of their party which was then in session in the city.

² For the proceedings of the convention, see *State Papers on Nullification*.

people, the Ordinance enjoined on all officers of the State, except members of the Legislature, and on all jurors, the duty of taking an oath to obey and enforce the Ordinance and the acts which should be passed to give it effect; and ordained that no authorities should enforce the payment of duties within the State. Details were left to the State government, but it was provided that the acts which the Legislature was required to pass in order to carry into execution the purposes of the convention, and to arrest the operation of the acts of Congress, should take effect from February 1, 1833. Finally, the Ordinance expressed the determination of the people of South Carolina not to submit to force, and, in case the general government should undertake to exercise coercion, to hold themselves absolved from all political connection with the people of other States, and to organize a separate government. Before adjourning, the president was authorized, "if in his opinion the public exigencies" should demand, to assemble the body any time before November 12, 1833. Furthermore, a committee, consisting of William Harper, Robert Y. Hayne, Benjamin Rogers, Thomas Harrison, and John S. Maner, was appointed to act in case of the death or disqualification of the president. January 31, 1833, the day before the acts of the Legislature were appointed to go into effect, was designated as "a day of solemn fasting, humiliation, and prayer."

Oath.

Time of operation.

Secession.

Reassembling.

Fast day.

When the Legislature assembled on the 27th of November, the message¹ of Governor Hamilton was promptly laid before it. Attention was directed to the requirements of the Ordinance which had become a part of the fundamental law of the State. The die had now been cast; there was no longer a question for

¹ *South Carolina Laws* (1832).

Hamilton's
belligerent
message.

debate. The Legislature was advised to take such measures as would accomplish the purposes of the Ordinance. A revision of the militia system was recommended by Hamilton; and authority was asked to accept the services of two thousand volunteers for the defence of Charleston, and of ten thousand to be organized as a State guard. The remedy, the Governor said, was, or ought to be, a peaceful one, and should be such so far as South Carolina was concerned. Confidence was expressed that arbitration would be granted by a call of a general national convention; but still it was declared to be the part of wisdom to prepare for the worst. This was Hamilton's last communication as Governor. December 13, 1832, his successor, Robert Y. Hayne, delivered his inaugural address.¹ Governor Hayne began his term of office by announcing his determination to uphold the sovereignty of his State, and to recognize no allegiance as paramount to that which was due her.

Action of the
Legislature.

Replevin Act.

Upon the Legislature now devolved the duty of carrying out "the peaceable remedy" of nullification; and it acted promptly upon the recommendations of Governor Hamilton. The first measure, the Replevin Act, was intended to meet the probable detention of goods on which the payment of duties was refused.² By this act any goods detained for the non-payment of duties, or under pretence of securing duties, could be recovered with damages.

Federal
authorities.

Provision was also made for the case of refusal of the United States authorities to deliver the goods in question; the sheriff, upon a writ conferring the authority, was empowered to seize the personal effects of the offender and to hold them till the goods were delivered. It was further provided that any person who should pay

¹ *South Carolina Laws* (1832).

² *Ibid.*

any duty might recover the same, and, if arrested upon a judgment obtained in a federal court for duties claimed, might avail himself of the provisions of the Habeas Corpus Act; and sales of property of importers to secure the amount of duties were declared illegal. The dangerous question of appeals was to be settled by a provision by which clerks were forbidden, under penalty, to furnish courts with copies of record; and heavy penalties were imposed on any one who should in any manner obstruct proceedings under the act. A third series of measures provided for military defence, if necessary: a Militia Act was passed;¹ and the Governor was authorized, in case an effort was made to coerce the State, or any forcible resistance was offered to the measures of the State, to call out such part of the militia as he should deem necessary. He was further empowered to purchase ten thousand stand of small arms, and such other munitions as circumstances might justify. This power conferred upon the Governor was made applicable to cases of insurrection, invasion, imminent danger, and all cases where the laws were opposed by combinations too powerful for the ordinary civil officers. The last, and to the Union men the most obnoxious measure, was the Test Oath Act,² requiring every officer, civil or military, to take the oath prescribed in the act,—and in particular the judges in Charleston, before sitting upon any case involving the injunctions of the Ordinance.

Appeals.

Defence.

Test oath.

By the Union men all these proceedings were regarded as despotic in the last degree, as well as treasonable and revolutionary. The nullifiers had raved and ranted about the rights of the majority. The tyranny of an irresponsible majority was the theme on which they had thundered with most effect; and yet, compared

¹ *South Carolina Laws* (1832).

² *Ibid.*

Unionist
protests.

to the despotism of their own conduct, that of which they had complained was mildness itself. Well might one of the most moderate of the Unionists, Hugh S. Legaré, write: "When I read your Ordinance, I rubbed my eyes to be sure that I was not in a dream. I could not believe it possible that such insolent tyranny was in the heart of any man, educated as and where I myself imbibed my detestation of all arbitrary power, though its sceptre be in my own grasp. I don't speak of it as a federal or as an anti-federal measure, — I refer to it exclusively as a measure of government in South Carolina, and I declare to you solemnly that for the first time during this controversy I felt the spirit of civil war burning within me, and that I fervently prayed that my friends of the Union party would, without any hesitation, swear that it should never be enforced but at the point of the bayonet."¹ The special objection to the Test Oath Act was, that, without trial of any kind, it would prevent Union men from holding office; it ousted those who were then in official positions, and it placed them under judges who were creatures of their opponents.

Unionists
prepare to
resist.

Naturally, every effort was made to organize an effective resistance. The Union leaders were determined to keep a close watch over the proceedings of the nullifiers, and to hold themselves in readiness to meet any emergency. They therefore issued a call for a convention of their party to be held in Columbia while the nullifiers were in session. This convention did very little; it contented itself with passing resolutions exposing the inconsistency and injustice of the dominant party. The leaders kept in constant touch with Washington, and received the advice and encouragement of

¹ Legaré, *Writings*, I. 208. (Letter to Isaac E. Holmes, from Brussels.)

the federal authorities and promise of sufficient support through Joel R. Poinsett, who was Jackson's confidential agent in the State, and through Drayton and Huger. Poinsett, Drayton, and Huger, as well as Jackson, were very anxious that the nullifiers should be put down without the aid of the federal government; but still no precaution was neglected. The Unionists began to organize their adherents; military companies were formed throughout the State; regular drills were prescribed; men were enrolled who would obey the call of the President; and, in March, 1833, eight or nine hundred are reported to have volunteered to act in any emergency.¹

Nor were Jackson's preparations any less complete and satisfactory. In anticipation of the action of the convention, the commander in Charleston Harbor, Major Heileman, was warned, in the latter part of October, to guard against attempts which the militia would probably make to surprise the forts. The collector at the port was directed to regulate his conduct as the emergency demanded: to place on board of every vessel arriving a sufficient number of officers, who should remain till the duties were paid and till a regular permit was granted; and, if the duties were not paid, to sell the cargo. The collector was further instructed to resist the State law; to remain in Charleston as long as it was safe to do so, and, when exposed to danger, to remove to a place of security within the port. An additional revenue cutter was placed at the disposal of the collector, and during the months of November and December troops from Fortress Monroe, and two vessels, the *Experiment* and the *Natchez*, were ordered to Charleston. General Scott had been directed to take the chief command: he was ordered to strengthen the defences in the har-

Jackson's
preparations.

General Scott

¹ *Proceedings of the Convention of 1833*, pp. 72, 73.

bor, and to call for what reinforcements he should deem necessary; nothing was to be done in any direction to irritate the inhabitants; the officers were cautioned to be courteous but firm; and Major Heileman was even instructed, if the demand was made upon him, to turn the Citadel over to the State, and also whatever arms belonged to South Carolina.¹

Jackson's
opinions.

Jackson's letters² written at this time to his confidential correspondent, Joel R. Poinsett, are characteristic. He made no attempt to conceal his feelings towards Calhoun; he evidently thought the late Vice President was breaking down under the load he was carrying. Calhoun, he wrote, had, on a certain occasion, vented a little of his ire against him in the Senate, but was confused, and cut a sorry figure. And again, "Mr. Webster replied to Mr. Calhoun yesterday, and it is said completely demolished him. It is believed by more than one that Mr. C. is in a state of dementation, — his speech was a perfect failure; and Mr. Webster handled him as a child." Jackson's fighting spirit was aroused. To him the action of the "Nullies" was folly and madness; the followers were deluded; the leaders were wickedly laboring to destroy themselves and the Union; they were all demagogues. The first act of treason would implicate all who aided or abetted the execution of it. Let the first overt act be committed, and nullification would be demolished by striking at the leaders; the moment there was a hostile array, they would be arrested. If the marshal should be opposed by twelve thousand men, his posse would be raised to twenty-four thousand. The threats of South Carolina were impotent. What could she do, divided

Coercion
promised.

¹ *Congressional Debates*, 22 Cong., 2 sess., Appendix, 177-198 (1832-33).

² Stillé, *Life and Services of Joel R. Poinsett*.

at home, against the whole Union? He had had offers of volunteers from every State in the Union, and could march two hundred thousand men into the State in forty days. Let the Union men have no fears.

The President, in his fourth annual message,¹ Jackson's proclamation December 4, 1832, called the attention of Congress to the threatening attitude of South Carolina, but indicated that the existing laws were sufficient for all immediate attempts that were likely to be made. He promised to give notice and make suggestions if difficulties arose. On December 11, the nullification proclamation appeared, — moderate and impressive, dignified and yet direct, positive and yet appealing: free from the ingenuity of the metaphysician, the document expressed the sense of the nation.² It is a credit to its authors, Jackson and Livingston, both of Authors. whom, it may be noted, were Southerners. To Southern statesmen, therefore, belongs the distinction of giving to the country the first great national refutation, embodied in legal form, of the doctrines upon which thirty years later the people of the South staked their lives and fortunes.

Strict duty, the President solemnly proclaimed, would Doctrine. require of him nothing more than to execute the laws and preserve the peace of the Union. But the imposing aspect of the opposition, and the interest which the people of the United States felt in rendering a resort to more extreme measures unnecessary, demanded an indication of his views and of the course which he felt bound to pursue. The doctrine of the State veto was inherently absurd; the constitutional history of the country contained sufficient evidence that it would have been indignantly rejected by the founders of our

¹ *Statesman's Manual*, II. 786, 787.

² *Ibid.*, 794-807.

government. "I consider, then, the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed."

Having stated the general principle, the President passed on to consider the objections which the Ordinance had urged against the federal laws, and then to a discussion of the right of secession; and here he directly joined issue with Calhoun on the fundamental question. The States severally, he argued, did not retain their undivided sovereignty. The most conclusive evidence of this was the fact that they had expressly ceded the right to punish treason against the United States. The reasons which forbade secession were obvious; all the other States, in self-defence, would be compelled to oppose it. Then followed an appeal to the citizens of his native State.¹ In simple terms, Jackson warned them that they had been deluded by men who were deceived or deceivers. The evil had been exaggerated; their pride, their courage, and their passions had been appealed to. He warned them that their remedy could not be peaceful. The object of the leaders was disunion; and disunion by armed force was treason. Finally, an appeal was made to the people of the United States, in which confidence was expressed that he would meet with their undivided support, and that the integrity of the Union would be preserved.

The President's confidence in the other States was not misplaced. State after State, from Maine to Mississippi, promptly gave formal expression of their approval of the President's sentiments, and of their

State
sovereignty.

Response
of the
"co-States."

¹ See Proclamation, *Statesman's Manual*, II. 804.

determination to support him in the exercise of his legitimate powers.¹ Not one State failed emphatically to condemn nullification. The Northern States were more unreserved than the Southern; for, as a rule, they not only denied the validity of the doctrine of State veto, but also of the doctrine of secession. The Southern States, with the exception of Maryland, had nothing to say on the nature of the government or on the right of secession, but confined themselves to the question immediately before them. Georgia and Alabama joined with South Carolina in recommending that a general convention should be called, which should settle once for all the questions that had excited discontent in the various States. Georgia went so far as to draw up a plan for a convention, and Alabama suggested March 1, 1834, as the date, and Washington as the place. Virginia and Alabama requested that South Carolina suspend her Ordinance, and that Congress modify the tariff. Virginia reaffirmed the principles of the Resolutions of 1798 and of the Report of 1799, but could not regard them as sanctioning the measures of South Carolina. Her Legislature voted to send a commissioner to South Carolina to effect an accommodation if possible, — a step which displeased Jackson extremely, but which was again substantially followed by Virginia in 1861. Her determination to send a commissioner, he wrote, had done more harm than good, for it had led South Carolina to expect assistance from her. She should simply have denounced nullification, and this would have brought about a repeal of South Carolina's Ordinance.

Georgia and
Alabama.

Virginia.

The proclamation was greeted by the South Carolina Legislature with a defiant spirit. To quote from John Quincy Adams, "It was a blister plaster."² Governor

¹ *State Papers on Nullification*, 101-292.

² John Quincy Adams, *Memoirs*, VIII. 511.

The Proclamation in South Carolina.

Hayne was called upon to issue a counter proclamation, "warning the good people of this state against the attempt to seduce them from their allegiance," and on December 20th a long set of resolutions was adopted. The proclamation was declared to be an unwarranted interference with the affairs of the State; the President had no right to promulgate his exposition of the Constitution with the sanction of force. The right of secession was reaffirmed, and the primary allegiance of the citizen was declared to be due to the State. The President had not attempted to disguise his personal hostility; his measures were regarded with indignation, and force would be repelled by force.¹

Governor Hayne's proclamation, issued on December 20th, was written in his usual happy and plausible style. The familiar doctrine was ably and elegantly restated. No new arguments were advanced, but a just criticism was made on the President's apparent determination not to see that South Carolina had expressed an anxious and sincere desire to submit her grievance to a general convention, or to recede from her position if a revenue tariff should be adopted. Further, the imputations of the President against the motives of the leaders were justly resented. All citizens were exhorted to be "fully prepared to sustain the dignity and protect the liberties of the State, if need be," with their "lives and fortunes."²

Randolph's sympathy.

The President's proclamation was the signal for some of the most ardent nullifiers to offer their services to the State government. A most daring but somewhat antiquated knight from a sister State had already indicated his intention to die for South Carolina. "If I cannot be booted and mounted for the conflict,"

¹ *Executive Documents*, 22 Cong., 2 sess., I., No. 45 (1832-33).

² *Niles Register*, XLIII. 308-312.

wrote John Randolph, "I will at least be borne, like Muley Moluc, in a litter to the field of battle and die in your ranks."¹

Hayne had not been backward in carrying out the instructions of the Legislature relating to the militia, and had done everything in his power to put the State in an attitude of defence. The Citadel, which, as we have seen, was occupied by the federal authorities, was vacated at his request, in accordance with the instructions of the Federal Executive. Certain claims of the State upon the general government, payable in arms, amounting in value to \$41,625, had been presented and satisfied even before the expiration of Governor Hamilton's term, in December, 1832. After the passage of the Militia Act of that year, the enrolling of volunteers began, and within a few weeks as many as twenty thousand had presented themselves; drilling was the order of the day; arsenals and depots were established at various places in the State; and all necessary arrangements for handling troops were perfected.

Measures of
defence.

Thus every movement made by one of the parties was met by a counter movement on the part of the other. Through the latter part of December, 1832, and the early part of January, 1833, they stood watching each other. It is surprising that so few collisions occurred. The middle of January passed by, the first of February drew near,—the day appointed for the Ordinance to take effect; and still there was no change in the situation. To all appearances a trial of strength would soon take place. The President had sent to Congress his Force Bill message of January 16, 1832; but the president of the South Carolina Convention had made no arrangements for calling the delegates together.

The critical
date, Feb. 1.

¹ *Niles Register*, XLIV. 383; Letter to Hamilton before the appearance of the Proclamation.

Charleston
meeting.

There was in reality very little danger. The leaders of the nullifiers had a surprise in store. On Monday evening, January 21, at a meeting of a large number of citizens at the Circus, in Charleston, the Ordinance was practically suspended.¹ Lieutenant Governor Charles C. Pinckney presided over the meeting; Judge C. J. Colcock, chairman of the committee of thirteen in the Convention, presented the resolutions, which were adopted; and Ex-Governor Hamilton, president of the Convention, seconded the resolutions and supported them in a speech of considerable length. Thus the proceedings, though of an informal character, had full official countenance. Through several long sections, the nullifiers hurled denunciations and defiance at the general government, as if to dispel the idea that they were receding from any of their demands; and then they proclaimed that they had "seen with lively satisfaction, not only indications of a beneficial modification of the tariff, but the expressions of sentiments in both branches of Congress, as well as in other quarters, auspicious to the peace and harmony of the Union" which should be met by a corresponding disposition on the part of the State. Therefore, "It is hereby declared that it is the sense of this meeting that, pending the process of the measures here alluded to, all occasion of collision between the federal and state authorities should be sedulously avoided on both sides in the hope that the painful controversy in which South Carolina is now engaged may be thereby satisfactorily adjusted, and the union of these states be established on a sure foundation." The next resolution pledged each citizen, in case expectations were disappointed, to sustain the Ordinance of the Convention. The right of secession was distinctly affirmed. President Hamil-

Ordinance
suspended.

¹ *Niles Register*, XLIII. 380-382.

ton, in seconding the resolution, said that it was only proper to avoid a conflict while the tariff bill was before Congress. "We owe this to our friends out of the State. We could pause with honor. His own conduct would be guided by the tone of the resolutions proposed. He had himself made an importation of sugar. He would allow his importation to go into the Custom House stores and wait events. He would not produce an unnecessary collision; but, if our hopes of a satisfactory adjustment of the question were disappointed, he knew that his fellow-citizens would go even to the death with him for his sugar." With regard to the President's call for power to coerce South Carolina, he said that, if Congress granted it, he would immediately "reassemble the convention and submit to them the question of secession, and none could doubt what their choice would be." Congress very promptly granted the power, but Hamilton did not submit the question.

Secession
affirmed.

Coercion.

The action of this meeting was as remarkable as it was wise; and, indeed, its wisdom stands out the more when one considers its source. It was not merely the setting aside of an ordinary law, — that would have been sufficiently startling; this was practically the nullification, by general consent, of a fundamental statute emanating from the sovereignty of the State. The reasons assigned for the action are not quite satisfactory. It is true that it would have been inexpedient to press forward into a conflict, when there were signs that action approximating what the State demanded, at least in one direction, would be taken by Congress. But such signs had appeared several weeks before; why was not the Ordinance suspended earlier? Partly because the nullifiers had not been able to convince themselves that the general government would stand firm. They had not seriously expected to come to blows; this was not

Nullification
by consent.

Concessions
expected.

down on their program; the remedy was above all things a peaceful one; at least as such they had persisted in speciously representing it to the people. They consciously or unconsciously expected that concessions would be made by the general government. They had expected the support of some of the States and of the President, and they had not received it. If Jackson had not taken a determined stand, or if he had remained indifferent, as in the case of Georgia, this action of the leaders on January 21 would scarcely have been taken. Nor, in all probability, would South Carolina have yielded so hurriedly if there had been no indications whatever that Congress would pass a satisfactory tariff bill.

New tariff
bills.

In fact, for several months there had been clear and unmistakable indications of a reaction against the protective policy. President Jackson, in his first three messages, had recommended reform, indicating the lines along which action should proceed.¹ As early as March, 1832, Judge Baldwin had formulated a plan for settling the tariff question. It was simply to reduce all duties to the uniform rate of 20 per cent. This plan, having the entire approval and support of the President, was submitted to Hayne and McDuffie. They showed no enthusiasm over it, and did not say whether they would support it or not.² McDuffie, Chairman of the Committee on Ways and Means, had only the month before introduced a bill with a long report, practically proposing to reduce all duties to 12½ per cent.³ Then followed the election of 1832; and it was found that a majority of the candidates who were in favor of reform had been successful, and would take

¹ *Statesman's Manual*, II. 703, 704, 748-750, 763, 764.

² John Quincy Adams, *Memoirs*, VIII. 482.

³ *House Reports*, 22 Cong., 1 sess., II., No. 279 (1831-32); *Congressional Debates*, 22 Cong., 1 sess., 1763 (1831-32).

their seats in the fall of 1833. This strengthened Jackson's expressions in his fourth message,¹ and had a perceptible influence on the protective leaders.

The drift of public sentiment could no longer be disregarded. Jackson, in his message of December 4, devoted more space to the tariff. He recommended a cautious reduction of the whole range of duties to a revenue standard. The public debt would practically be extinguished by January 1, 1833, and thus a considerable burden on the revenue would be taken off. On December 27, the Verplanck Bill, favored by the administration, was reported in the House. This bill proposed a considerable immediate reduction of duties, with still further reduction in 1834. This was a decided blow at protection. The bill was, however, defeated by skilful manœuvring: debate dragged along; amendments were proposed and carried through; and finally the bill became almost unrecognizable. At last, on February 12, Clay asked permission to introduce a tariff measure. Calhoun seconded Clay's efforts; and the compromise measure was ushered in. Calhoun approved of the general objects for which the bill was introduced. He was no advocate of any policy by which manufacturing interests would sustain a rude shock. While he objected to many of the details, he thought that, as a spirit of mutual compromise should prevail, no difficulty would arise in settling differences.² The measure was railroaded through Congress, having been before it only two weeks when it was passed in both Houses, February, 26, 1833.

Administration
tariff bill.

Clay's
Compromise.

A few days after the passage of the measure, Calhoun specified the details to which he had objected. He thought the reduction too slow in the first period,

Calhoun's
criticism.

¹ *Statesman's Manual*, II. 785, 786.

² *Congressional Debates*, 22 Cong., 2 sess., 477, 478, 791 (1832-33).

and eventually too rapid, and the time for final reduction too remote. By the terms of the bill, all the duties imposed by the act of 1832 exceeding 20 per cent were to have $\frac{1}{10}$ of all excess over 20 per cent taken off every second year, beginning January 1, 1834, and continuing till 1840. Then two sharp reductions were to take place, and after July 1, 1842, duties would stand at the uniform rate of 20 per cent. Home valuation, another objectionable feature, had been provided for by amendment at a late stage in the progress of the bill, and was intended to render the measure more acceptable to the protectionists. Calhoun had immediately declared that such an amendment could not be accepted: it was unconstitutional. Senator Clayton however at once declared that either that clause or nothing would be offered. If South Carolina accepted the bill as thus amended, she would have a pretext for rescinding her Ordinance; if she rejected it, she would be forced into a conflict with the general government, or make herself ridiculous. The South Carolina representatives declared that the alternative presented was one of acceptance or secession.¹ They would accept the measure as a peace offering. Calhoun was undoubtedly very much disturbed by the prospect of a collision between his State and the central government, and on this account was disposed to compromise. But the principal reason why he threw his influence in favor of the compromise measure was that it approximated very closely to what he had desired.

Seven years later,² Calhoun indicated what terms he would have proposed and "dictated" if circumstances had not prevented: to allow till 1840 for the reduction, taking off annually $\frac{1}{7}$ of all duties in excess of 15 per cent.

¹ See Speeches by Stephen D. Miller and Robert W. Barnwell in *Convention of 1833*, pp. 16-18.

² *Congressional Globe*, 26 Cong., 1 sess., 97 (1839-40).

Issue of
resistance.

Calhoun
yields.

He asserted that no gratitude was due to Clay for his part in that struggle; that he had the mastery over him on that occasion: Clay had compromised to save himself; for he would have experienced difficulty in bringing even his constituents to sustain his previous system. But the principal fact was that Jackson by means of his Proclamation had drawn round him Clay's supporters. Jackson and Webster were then in combination, and all the advantage would have accrued to Webster if the controversy had ended without a compromise.

The passage of the tariff measure was only one part of the program which the leaders of the dominant combination had laid out. More important was the passage of a measure for more effectually securing the collection of the revenue. There was a disposition on the part of Congress and the President to go to some length to appease South Carolina; but there was also a determination that the supremacy of the federal government should in any case be recognized and sustained. In fact, there were those who, like Webster, would have preferred first to compel submission to the federal laws, and then to make whatever alterations in those laws expediency might dictate.¹ But as it was, concession and compulsion went hand in hand: the Compromise Measure and the Force Bill received the President's signature on the same day. The President in his message to Congress, December 4, had promised, as has been stated,² that, if difficulties should be experienced in executing the laws, he would give prompt notice and would suggest the course to be pursued. On January 16, 1833, having received the documents embodying the acts of the South Carolina authorities, he submitted to Congress a long message, in which the condition of affairs was described and additional powers asked for. The provisions of

Olive branch
and sword.

¹ Lodge, *Webster*, p. 223.

² See above, page 125.

Jackson
asks more
authority.

the acts passed by the South Carolina Legislature to enforce the Ordinance were presented at some length, and an argument was advanced to show that the Constitution was competent for its own defence. Authority was asked to alter or abolish certain ports of entry, and to use the regular forces and the militia to protect the officers of customs in the discharge of their duties, if necessary. Finally, it was suggested that it might be desirable to revive the sixth section of the act of March 3, 1815, and to provide that, where suit was brought in the State courts against an individual for an act done under a law of the United States, the case might be removed into the United States Circuit Court without a copy of the record; that individuals acting under the United States laws and receiving injuries for disobedience of the State laws, might seek redress in the federal courts; and that the marshals might be authorized to make provision for keeping prisoners.¹

"The Bloody
Bill."

On January 21, the very day of the irregular suspension of the Ordinance by the State Rights leaders, a bill embodying the foregoing recommendations was introduced into the Senate by Wilkins of Pennsylvania, Chairman of the Judiciary Committee. Immediately there began a bitter opposition on the part of Calhoun and the other South Carolina leaders. Wilkins advocated the passage of the bill in a speech in which he attacked the doctrine of nullification. On the 22d, Calhoun set up his line of opposition in a set of resolutions on his favorite topic, of the relation between the States and the general government.² If his views were sound, there could not be found in the Constitution any authority for granting what Jackson asked.

On February 15 and 16, Calhoun delivered an elab-

¹ *Statesman's Manual*, II. 808-826.

² *Congressional Debates*, 22 Cong., 2 sess., 191 (1832-33).

orate speech on the Force Bill. It placed at the disposal of the President, he maintained, the army, the navy, and the entire militia of the nation to make war against a sovereign State, not as a State, but as an aggregation of outlaws.¹ It did not, in fact, do so reputable a thing: it did not declare war; it decreed a massacre. South Carolina would resist its enforcement to death itself. Webster followed Calhoun, but did not reply to his remarks on the Force Bill. He drifted off into a discussion of secession and nullification, placing the controversy back on the higher and more extensive ground mapped out by Calhoun on January 22.² Calhoun rejoined on February 26, restating his old arguments.³ Two days later, he declared that South Carolina would not attempt to stop the proceedings of the federal courts, but would maintain the authority of her own judiciary. South Carolina would employ force only to resist force. He regretted that she could not appeal to the sense of justice of the general government.

Calhoun
protests.

In the House, the South Carolina Representatives were more fiery. "The President," cried out Warren R. Davis, "is impatient to wreak his vengeance on South Carolina. Be it so. Pass your measure, sir; unchain your tiger; let loose your war dogs as soon as you please." He knew his State, he said; she would resist the bill with scorn and indignation, whether the compromise measure were passed or not. South Carolina had received the insolent mandate of the President commanding her to retrace her steps, and for answer she sent him back the message from Utica to Cæsar: "Bid him disband his legions; restore the commonwealth to liberty; abide the judgment of the Roman

South
Carolina
stands out.

¹ *Congressional Debates*, 22 Cong., 2 sess., 535, 536 (1832-33).

² *Ibid.*, 553-587.

³ *Ibid.*, 750-774.

McDuffie's
protest.

Senate; and strive to gain the pardon of the Roman people." ¹ On the day the measure passed, the question of its title being before the House, McDuffie rose to perform a solemn duty. The House was about to destroy the rights of the State, was about to bury the Constitution. He asked the poor privilege of writing its epitaph. He then proposed to amend the title of the bill by substituting "An Act to Subvert the Sovereignty of the States of this Union, to Establish a Consolidated Union Without Limitation of Powers, and to Make the Civil Subordinate to the Military Power." ² All declarations and all arguments availed nothing. The bill passed both Houses, March 1, 1833, and on the following day was sent to the President for his signature.

Convention
called again.

It now remained to see what South Carolina would do in her sovereign capacity. On February 5, the president of the Convention, Ex-Governor James Hamilton, was officially informed of the arrival of Benjamin Watkins Leigh, the commissioner of the Commonwealth of Virginia, bearing the resolutions soliciting South Carolina to rescind or suspend her Ordinance till after the adjournment of Congress. ³ The resolutions were accompanied by a request from the commissioner that the Convention be called together at an early moment. President Hamilton thought that no action would be taken on the proposition submitted till it was known what Congress would do, and therefore, in the proclamation which he issued on February 13, he named March 11 as the day for reassembling.

Convention
reassembles.

At noon on the appointed day the delegates gathered in the hall of the House of Representatives. ⁴ Hamil-

¹ *Congressional Debates*, 22 Cong., 2 sess., 1769, 1770 (1832-33).

² *Ibid.*, 1903.

³ *Journal of the South Carolina Convention of 1833*, p. 12.

⁴ For the proceedings see the *Journal of the Convention*.

ton, who, as Governor of the State, had been chosen president of the Convention at the first session, resigned; and Governor Robert Y. Hayne was immediately elected to fill the vacancy. The Virginia commissioner was invited within the bar, and every courtesy extended to him. Calhoun, who had hastened from Washington after the adjournment of Congress, to use his influence to have the convention accept the compromise measure, was invited to a seat on the floor and attracted a great deal of attention. A committee of twenty-one was instructed to take into consideration the communication from Virginia, and all other matters involved in the controversy, and to suggest the course the convention should pursue. On the 18th, the committee brought in an Ordinance rescinding the Ordinance of November 24, 1832, and all acts of the Legislature passed in pursuance thereof except the act amending the militia laws; accompanying the Ordinance was an elaborate report on the compromise measure. The rescinding Ordinance was adopted March 15, by a vote of 153 to 4.

Ordinance
rescinded.

The Convention was convinced that the attitude of South Carolina had been the one factor in bringing about the reform of the tariff, and that therefore a glorious victory had been won. South Carolina, said Governor Hayne, had not obtained all she had a right to demand; but such an opportunity was offered for adjusting the controversy that, consistently with her previous representations, she could not do otherwise than take advantage of it. It was generally claimed that the State had obtained substantially what she had contended for during the ten preceding years. Some extreme members were inclined to deny that any triumph worth speaking of had been achieved; but the majority echoed the sentiments of Turnbull, who declared that it was no little victory to have "foiled the barbarian fury"

Who was
victorious?

Coercion
ignored.

of General Jackson. "With but our one-gun battery of Nullification, we have driven the enemy from his moorings, compelled him to slip his cables and put to sea." In these boasting moods, the nullifiers evidently confined their thoughts solely to the tariff issue. They would have experienced some embarrassment in admitting other considerations just at that time. What had become of all their dread of consolidation? What had they meant by asserting that they were not fighting merely over a scale of duties, but over great principles? What of their subsequent declarations that the struggle had only begun? What of the Force Bill? Was it not the most striking embodiment of centralizing tendencies that had yet been made? What would they do with it?

Force Bill
nullified.

Some said that it was a dead letter, and needed no attention; but the committee of twenty-one thought differently. It submitted a long report, declaring that the act established a dangerous precedent; that it was permanent, and might be put into operation at any time; and its object was to consolidate the government. It was recommended that the Convention nullify it, in other words, that the Convention declare the law void within the limits of South Carolina, and require the Legislature to take the necessary steps to prevent its enforcement, and to inflict the proper penalty on any person doing any act in pursuance of it. What would be the proper penalty to inflict on the army and navy, and the militia? McDuffie ridiculed the proposed Ordinance, asking how the committee would nullify the army provision of the Force Bill. The Convention accepted the recommendation of the committee, and, on March 18, adopted both the report and the Anti-Force Bill Ordinance¹ by a vote of 132 to 19. On the same day the Convention dissolved, and the State's interests

¹ See Appendix B.

were once more intrusted to her ordinary authorities. It had been the wish of some delegates that the Convention should continue its existence so that it might be ready to aid Georgia in the Cherokee controversy; but General Hamilton disposed of this by remarking that the "good king" would not "touch a hair" on Georgia's head. The "amiable monarch," he observed, had two measures of justice, one for Georgia and another for South Carolina.

Convention
dissolved.

CHAPTER VIII.

SIGNIFICANCE OF NULLIFICATION.

THE struggle was thus brought to a close; and what had it settled? What had been gained by a resort to such an unusual remedy, that could not have been accomplished through the ordinary channels? Which side had really come out of the controversy victorious?

A victory for
the Union.

All things considered, it must be admitted that the issue of the controversy was decidedly a victory for the general government, at least so far as principles are concerned. It is true that the State's immediate grievance had been partially removed, that the tariff system had undergone a considerable degree of alteration; but the reform was not by any means so thoroughgoing as South Carolina had demanded. On February 8, 1832, McDuffie, Chairman of the Committee of Ways and Means, had submitted to the House, as has been indicated,¹ a tariff bill which, in substance, proposed to reduce all duties on imports to 12½ per cent *ad valorem*,² and this bill the South Carolina State Rights and Free Trade Convention of 1832 formally approved as indicating the true constitutional point to which duties might fall. The measure, which the nullifiers paraded as a trophy at the close of the struggle, provided for only a very gradual reduction of duties; and only at the end of

Tariff rates.

¹ See page 124.

² *Congressional Debates*, 22 Cong., 1 sess., 1763 (1831-32). McDuffie and three other Southern members constituted the majority of the committee.

nine years was the uniform rate of 20 per cent to be reached. It would seem that the nullifiers should at least have restrained their enthusiasm within bounds.

Furthermore, it would be far from the truth to say that the action of Congress in 1833 is to be attributed solely to the attitude of South Carolina. It has already been pointed out that the conditions were ripe for reform. South Carolina's opposition at most did little more than hasten what, in all probability, must have come about within a comparatively short time. The revenue of the government under the tariff of 1832 was too large for its necessities, and needed to be reduced.

Convention
not decisive.

But this is not all. If we may believe the declarations of the leaders of the nullifiers before and after the compromise, the mere question of a scale of duties was an insignificant element in the struggle. Whether the general government or the State was supreme, whether the Constitution made a nation or a league, whether there should be a government of the majority or a government of the minority, whether each State should hold its destiny in its own hands, whether any opening should remain through which attacks might be directed against the peculiar institution of the South, — all these made up the real issue, and all these, except one perhaps, had been emphatically decided against the State, so far as they could be decided peaceably.

National
supremacy.

As for the unique doctrine on which the State had placed her reliance, had it not broken down at every point, and had not the expectations of all its advocates been disappointed? The leaders entered upon the struggle confidently reckoning upon the sympathy of the Executive; and we find the President up in arms and determined at every hazard to maintain the supremacy of the Union. South Carolina looked for the encouragement and support of her sister States; and yet her measures were buried beneath the logic and indig-

Nullification
a failure.

nation of twenty-three out of twenty-four of them. The remedy was to be above all things peaceful; and yet it became evident that it could be enforced only at the risk of a civil war. The nullifiers expected the united support of the people of South Carolina; and yet, with all the pressure that was brought to bear, they were able to command for their measures only a majority. Where, then, was there a justification for the boasting over the outcome? Surely Robert Barnwell Smith (Rhett) was right for once when he told the Convention of 1833 that little could be found that furnished "cause for a congratulation and triumph."

The doctrine
reaffirmed.

Still South Carolina continued to boast of the glorious stand she had made for liberty in 1832, and apparently retained the highest opinion of her remedy. She did not bring herself to the point of resorting to it again, but she brought it out on more than one occasion, and held it up as a threat to the protectionists. During the tariff discussion in Congress in 1842, there was again talk in South Carolina of nullifying any measure that might be passed; and the State Legislature went so far as to assert the validity of the nullification doctrine.¹ The people of the State had come to regard the compromise measure as a treaty "made between belligerent parties with arms in their hands, — solemnly ratified by the federal government on the one part, and the Convention of South Carolina on the other, and deposited among the archives of our country"; and therefore, when it seemed probable that a high protective measure would be forced upon them in 1842, their indignation knew no bounds.

Governor Hammond touched on the question in 1844, and explained why South Carolina did not resort to nul-

¹ *Laws of South Carolina* (1842), and Messages of Governors Henagan, Richardson, and Hammond, 1840, 1841, 1844. See Appendices C and D below.

lification in 1842. The State, he said, was then closely united to the Democratic party on certain questions of great moment, and this party had carried the Congressional elections by a large majority. South Carolina had awaited the action of the new Congress. But the new Congress introduced no reforms, and Governor Hammond reminded the State that she was bound by her history and her principles to bring all her resources to bear against the established policy, even physical force if necessary. The possibility that the protective policy might be continued when the year approached for the uniform rate of 20 per cent to take effect, was present in the minds of some of the leaders in 1833; and James Hamilton, Jr., in the Convention of that year, had introduced a resolution pledging the State to resist, in such a contingency, by interposition or by any other mode she might deem expedient. The Convention, however, thought the resolution inexpedient, and voted not to consider it.¹

Tariff of 1842.

It remains now to point out certain general effects of the nullification controversy, and to suggest its connection with the subsequent history of South Carolina. Attention has already been called to the fact that a conviction had grown up that the interests of the North and the South were diametrically opposed. The controversy undoubtedly served to deepen and strengthen this conviction. Connected with this variance, and especially worthy of notice as a result of the struggle, is the alienation of the greater part of the people of South Carolina from the general government, and a disposition to look to secession as an ultimate necessity.

Effects of the controversy.

At an early stage of the struggle the value of any connection with the Union at all had been called into question, and this fact had aroused Calhoun to the

¹ *Proceedings of the Convention of 1833*, p. 6.

Early dis-
unionists.

necessity of taking some positive step. At a meeting in Columbia in the summer of 1827, President Cooper, of the South Carolina College, had stirred up no little excitement by concluding his speech as follows: "I have said that we shall, ere long, be compelled to calculate the value of our Union; and to inquire of what use to us is this most unequal alliance by which the South has always been the loser and the North always the gainer? Is it worth our while to continue this union of States where the North demand to be our masters and we are required to be their tributaries? Who, with the most insulting mockery, call the yoke they put upon us the American System! The question, however, is fast approaching to the alternative, submission or separation."¹ In 1828, James Hamilton, in his Walterborough speech, had echoed this sentiment; and before 1833 speaker after speaker had repeated it with greater emphasis. More important, however, are the formal expressions of the representative bodies of the State as to the right of secession. So far as appears, the first formal declaration of the right of secession was made in a set of resolutions adopted by the Legislature, December 20, 1828. Of course the adoption of the "Exposition" of that year formally committed the State to the doctrine. We have other declarations in 1831 and 1832;² and the Ordinance of nullification of 1832 asserted the right, but made its exercise contingent on the action of the general government.

Secession
affirmed.

¹ *Niles Register*, XXXIII. 27-32.

² *South Carolina Laws* (1828), p. 197; *Ibid.* (1831), p. 29; *Ibid.*, (1832), p. 29. In the set of resolutions adopted in 1832 we find the following: "Each State of the Union has the right, whenever it may deem such a course necessary for the preservation of its liberty or its interest, to *secede* peaceably from the Union, and that there is no constitutional power in the general government, much less in the Executive Department, to retain, by force, such State in the Union."

It is undoubtedly true that the right of secession was more generally admitted than was the right of nullification. Such men, for instance, as William Drayton and Langdon Cheves rejected the latter doctrine, but unqualifiedly accepted the former.¹ Langdon Cheves opposed nullification mainly on the ground of expediency. His proposal was to take measures to secure the union of the Southern States, and to do nothing without their co-operation; for resistance by a single State would be abortive. The question, he said, was a great Southern question. "We cannot, therefore, either in policy or justice, in my opinion, act without seeking or awaiting their co-operation. This is the more imperiously our duty, if we rely upon their co-operation in any difficulties which may involve the employment of national force. I therefore deprecate a separate state action on the part of this State, at this time, as premature and impolitic."² Whether or not Cheves, before the struggle was over, would have been glad to see the Southern States unite and secede, is a matter of some doubt. In 1830 he thought that, if the union was effected, secession would not be necessary, because the demands of the South would be conceded. But we certainly find him a few years later advocating

Langdon
Cheves.

Southern
union
proposed.

¹ Drayton, speaking at a State Rights and Free Trade Celebration held in Charleston in 1830, said: "A crisis might arise when the bonds of union ought to be broken. The right of the state to *secede* from the Union, I unqualifiedly concede; but so long as she belongs to it, if she be not bound by its laws, the monstrous anomalies would exist of a government where acts were not obligatory upon its citizens, and of a state constituting one of the members of the union whilst denying the authority of its laws." *Proceedings of the State Rights Celebration at Charleston*, July 1, 1830: Nullification Tracts (Boston Athenæum, Library No. B. 1065).

² *Ibid.* See also a letter of Cheves in Thomas, *Reminiscences and Sketches*, II. 232.

union for another purpose, and the part he played in the Nashville Convention of 1848 is very well known.

Disunionists
of 1833.

Whatever the truth with regard to Cheves, there certainly were men in the State who were openly in favor of disunion in 1833. Phillips, of Chesterfield County, told the Convention of that year that there were honest men in his neighborhood standing aloof from both the unionists and the nullifiers, waiting for the formation of a party which would "go boldly and openly for disunion."¹ And there were many more who believed that the attempt to secede would have to be made at no distant day. Judge Harper cautioned the Convention which rescinded the Nullification Ordinance that they were at the beginning, not at the end of the contest. "In less than another year, we may be called to arms. . . . All men agree that we cannot safely intermit our military preparations. I myself believe that a contest will come at no distant day."² Robert Barnwell Smith represented the extremists. He could scarcely contain himself when he heard the sentiment expressed in a report submitted to the convention of 1833 that "ardently attached to the union of these States, the people of South Carolina were still more devoted to the rights of the States." He could not play the hypocrite, he said. He believed that he expressed the feelings of his constituents when he declared that under the government as administered there was no ardent attachment on their part for the Union; South Carolina had no rights under the Union but such as she was prepared to maintain by force; and South Carolina therefore must be an armed camp.³

South Caro-
lina an armed
camp.

McDuffie declared that there was in the government a proclivity to consolidation. The Southern States were, by their peculiar interests and institutions, the sentinels

¹ *Proceedings of the Convention of 1833*, p. 66.

² *Ibid.*, 52.

³ *Ibid.*, 24-27.

of liberty. He would bid them with his last breath "to act as if the day were at hand when they must defend their freedom." The vigilance of the people of South Carolina must not be abated. "I tell them we have greater need to be prepared to defend ourselves against these people than against a foreign enemy. I have heard them even in Congress talk openly of attacking us; and that in a manner, with exultation, that would render fiends themselves as fit confederates for us as these men. Without such preparations, and without a strong military spirit, no people ever yet maintained its liberties. But all our peculiar circumstances — all our institutions — render a thorough system of defence absolutely indispensable to our safety as well as freedom. Our militia should be as well trained as the armies of Napoleon."¹

McDuffie
favors
disunion.

All this was not mere talk. We must bear in mind the attention that was bestowed upon the militia after 1832; and we should not lose sight of the abolition movement, which had begun to make itself felt in a very disagreeable manner. This movement, coming just when it did, when the people of South Carolina were already uneasy and irritated, prevented any considerable abatement of feeling, and added volume to the current that was to sweep the State out of the Union in 1860. The secession movement was well defined in South Carolina as early as 1830.

Secession
the logical
outcome.

¹ *Proceedings of the Convention of 1833*, p. 41.



APPENDIX A.

CALHOUN'S STATEMENT OF HIS CONSTITUTIONAL PRINCIPLES, 1824.

WASHINGTON, D. C., July 3, 1824.

MY DEAR SIR: — In asking my opinion of the Constitution, I understand you to refer to that portion of the instrument which relates to State rights, and in complying with your request I will accordingly limit my observations to that point of view.

If there is one portion of the Constitution which I most admire, it is the distribution of power between the States and general Government. It is the only portion that is novel and peculiar. The rest has been more or less compiled. This is our invention and is altogether our own, and I consider it to be the greatest improvement which has been made in the science of government, after the division of power into the legislative, executive, and judicial. Without it, free states in the present condition of the world could not exist, or must have existed without safety or responsibility. If limited to a small territory, they must be crushed by the great monarchical powers or exist only at their discretion; but if extended over a great surface, the concentration of power and patronage necessary for government would speedily end in terror. It is only by this admirable distribution that a great extent of territory, with a proportional population and power, can be reconciled with freedom, and consequently that safety and respectability be given to free States. As much then as I value freedom, in the same degree do I value State rights. But it is not only in the

abstract that I admire the distribution of power between the general Government and the States. I approve of the actual distribution of the two powers which is made by our Constitution. Were it in my power, I would make no change.

These remarks bring me to the question which I suppose you had more immediately in view. I mean that of the construction of the Constitution, or, in other words, how ought the line which separates the powers of the general and State Governments to be drawn where it is not distinctly delineated by the instrument itself. I can give but one solution to this interesting question, and that is, it ought to be drawn in the spirit of the instrument itself. I know that there has been an anxious desire among many of our best patriots to devise some one general and artificial rule of construction to be applied to any portion of the Constitution, but I cannot persuade myself that it is practicable, and believe that all such attempts must end in weakening rather than strengthening the rights of the States. It has been said, for instance, that the construction ought to be invariably rigid against the power of the general Government. The rule allows no discretion, but must be applied with equal severity to any portion of the Constitution, — to that which delegates power acknowledged by all to be essential to the safety of the nation, and to that which provides checks against the abuse of such power. I feel confident that such an application of the rule (and without it, it is nothing) must lead into perpetual difficulty and contradiction, which must finally bring into discredit those who act on it, and thereby weaken their authority when it may be most required. Believing that no general and artificial rule can be devised that will not act mischievously in its application, I am forced to the result that any doubtful portion of the Constitution must be construed by itself in reference

to the true meaning and intent of the framers of the instrument; and consequently that the construction must, in each part, be more or less rigid, as may be necessary to effect the intention.

Such being my general principles, it only remains, in complying with your request, to apply them to what I have said or done since I have been in public life in order to test their practical application, and I think it may be said with confidence that I have never uttered a sentence in any speech, report, or word in conversation that could give offence to the most ardent defender of State rights. On this point my character has been grossly misrepresented to the people of Virginia. Feeling the profoundest respect for the States, and believing their honor not to be greater than it ought to be, I have at least never spoken disrespectfully of them, or endeavored to establish principles that would weaken them; and for the truth of the assertion I appeal with confidence to my opinions as recorded, both in my speeches and reports. I have gone through a short, but active political life, and in trying times, and if hostile to the rights of the States, some evidence must be found of it in one or the other. If, then, I have given offence, it must be by my acts, and by them I am willing to be tried, and, if I mistake not, I have never done an act which, if condemned in me, Mr. Jefferson, Mr. Madison, and Mr. Monroe must not (?) be equally condemned. There are none of mine which are not covered by the example of deliberate acts of these enlightened statesmen. For example, I am accused of advocating the power of Congress to incorporate a National Bank; but those who make the accusation, and who profess to admire Mr. Madison and Mr. Jefferson, seem to forget that I had the weight of their authority with me. The former approved the bill which I contributed to pass, and the latter approved of one which extended a branch

of the old United States Bank to New Orleans. Must I then be judged more rigidly than these old Republican veterans, and they be excused for what I am condemned? Is this the justice of the ancient dominion?

Nor is there anything in the principle on which I advocated the passage of the bank bill calculated to give offence. I said nothing on the Constitution. I left each member to make up his own opinion on that point. I felt satisfied that the power existed, but at the same time respected those who took the opposite view, for I have always considered the power the least clear of those which have been exercised by Congress. I rested the argument for its passage on the necessity of restoring specie payments, at the time the legal currency of the United States had ceased to circulate, and to regulate, or to fix the value of that which did circulate. In fact, we had no currency but notes of some specie paying banks incorporated by the States, and wholly under their authority. Congress had wholly lost its constitutional power over that subject. However brought about, a state of things existed wholly incompatible with the provisions of the Constitution. To give to Congress virtually the power delegated to it by that instrument of fixing and regulating the value of the currency of the nation was the great object which I had in view in aiding the passage of the bill incorporating the United States Bank, and there certainly is much satisfaction in the reflection that this clearly constitutional object has been fully realized. If the measure can ever be justified, it was justifiable in the then existing circumstances.

It is again objected to me that I am a friend to the system of internal improvements, and that I assist a power in Congress to make roads and canals. Here I may cover myself by the same authority. Mr. Jefferson, Mr. Madison, and Mr. Monroe have again and again

approved of bills making appropriations for internal improvements; nor have I, in any instance, gone beyond their example, though it is true that Mr. Madison rejected the bill which I contributed to pass, and which set aside the bonds of the United States Bank as a fund for internal improvements. It ought, however, to be remembered the bill was not presented till the last moment of the session, when, as you know, . . . in the multitude of bills presented for consideration, but little time is left for the reflection of the President. I am satisfied that it is owing to that cause that his argument on that occasion partakes so little of his usual accuracy. In fact, his leading objection that the consent of the States could give no constitutional power, was misapplied. The truth is that the bill did not even make an appropriation of money. It simply set aside a certain fund for the purpose of improvements; that is, it provided that it should be appropriated to no other purpose, thus leaving it to be hereafter determined in what manner it should be appropriated and applied, whether with or without an amendment of the Constitution, providing only that it should not be applied but by the consent of the States to be affected.

I think it cannot be doubted that if the power existed in Congress to appropriate money for internal improvement for which we have the sanction of the three distinguished citizens to whom I have referred, there was nothing in the bill to make it unconstitutional. But I am really at a loss to know why this objection should be made against me. What distinguished public man is there now on the stage to whom the same may not be made? And most of them are men much more deeply committed than myself. I have never yet committed myself beyond the mere right of making an appropriation. I have nowhere in my public capacity asserted the right of applying money so appropriated without

the consent of the States, or individuals to be affected. I am perfectly open to the examination of that question should I ever be called on to act. It is, however, due to candor to say that my impression is that the power does exist to a certain extent, but as I have always believed that it should not be exercised without a clear necessity, and as I do believe that the mere right of applying our money, not as a sovereign without the consent of those to be affected, but as a mere proprietor with their assent, will be found sufficient in practice, I have carefully abstained from coming to any final conclusion until it becomes absolutely necessary.

I hope what I have written is sufficiently explicit. It is intended to be perfectly so, but if you should find it not so, I will at all times cheerfully give any additional explanation which you may require.

With sincere respect, I am,

J. C. CALHOUN.

Letter to Hon. ROBT. S. GARNET, Virginia. *Daily Advertiser*, Montgomery, Ala., March, 7, 1893.

APPENDIX B.

ORDINANCE NULLIFYING THE FORCE BILL.

SOUTH CAROLINA CONVENTION.

WE, the people of the State of South Carolina, in Convention assembled, do declare and ordain that the Act of Congress of the United States, entitled "An Act further to provide for the collection of duties on imports," approved 2nd March, 1833, is unauthorized by the Constitution of the United States, subversive of that instrument, destructive of public liberty, and that the same is and shall be deemed null and void within the limits of this State; and that it shall be the duty of the Legislature, at such time as they may deem expedient, to adopt such measures and pass such acts as may be necessary to prevent the enforcement thereof, and to inflict proper penalties on any person who shall do any act in executing or enforcing the same within the limits of this State.

We do further ordain and declare that the allegiance of the citizens of this State, while they continue such, is due to said State; and that obedience only, and not allegiance, is due by them to any other power or authority to whom a control over them has been or may be delegated by the State; and the General Assembly of the said State is hereby empowered from time to time when they deem it proper, to provide for the administration to the citizens and officers of the State, or such of the said officers as they may think fit, of suitable oaths or affirmations, binding them to the observance of such

allegiance, and abjuring all other allegiance, and also to define what shall amount to a violation of their allegiance, and to provide the proper punishment for such violation.

R. Y. HAYNE, *President.*

Journal of the South Carolina Convention of 1833. (March 18, 1833.)

APPENDIX C.

PROTEST AGAINST A PROTECTIVE TARIFF.

FROM THE MESSAGE OF GOVERNOR HENAGAN, 1840.

I MUST confess that I am not so much surprised as pained at this demonstration on the part of one of our sovereign States of this Confederation, to fix again, if possible, this odious system upon us. To this violation of the Constitution, this act of wanton and deliberate injustice, aggravated by the recollection of our former arduous struggle against it, South Carolina will never consent. . . . May Heaven spare us the renewal of those scenes of agitation which lately shook the Union to the centre, and avert that necessity which would force a sovereign State to seek common justice and vindicate her plainest rights by the strength of her own arm.

South Carolina Laws (1840).

APPENDIX D.

PROTEST AGAINST THE TARIFF OF 1841.

FROM THE MESSAGE OF GOVERNOR RICHARDSON, NOVEMBER 23, 1841.

THE living generation, who were witnesses of the struggles and pledges in the late contest for her constitutional rights, have not yet passed away; the monuments of the times have not yet perished; the very altars consecrated by her vows are still before us; — even her preparations for defence are still in readiness and requisition; the age, its records and recollections, have scarcely become a part of history, before the very burdens and oppressions which they were intended to resist are renewed with shameful infidelity, which seeks neither pretext nor justification. A home valuation, cash duties, and an unreasonable and exorbitant revenue of more than thirty million dollars, it is believed, are little less onerous in amount, or unconstitutional in effect, than the enormous forty per cent duties which the sovereignty of the State was so sternly interposed to resist; and if, upon the principle of all protective duties, they are destined to increase to an extent and enormity to which our experience in the past as well as the tendency of the times forebodes, then it will be for you to say whether South Carolina has so fallen from her high eminence of sovereignty and independence as to submit by silent acquiescence in these wrongs and grievances, that there is no mode, no remedy, no measure of redress. . . . There can arise no emergency in which the hands and hearts of her citizens would not be invincibly united in her defence.

South Carolina Laws (1841).

APPENDIX E.

NULLIFICATION REAFFIRMED.

REPORT OF THE COMMITTEE ON FEDERAL RELATIONS, 1842.

EACH State of the Union, as an independent party to the contract, had from the beginning, has now, and will retain to the end of time, the undoubted right to resort to this test, to try every law which is passed by the Federal Legislature; and when that body assume to make an enactment not sanctioned by that instrument, the States, by all the settled rules of right, may refuse their sanction and obedience, and say, "Non in hæc federa veni." Such we understand to be the fundamental principle of State Rights Democracy. *South Carolina Laws* (1842).

APPENDIX F.

PROTEST AGAINST THE TARIFF OF 1842.

FROM THE MESSAGE OF GOVERNOR HAMMOND, 1844.

THE proceedings of the last session of Congress form an epoch in our history. With . . . the circumstances under which the Act of Congress, called the Compromise Act, was passed, you are familiar. That Act was in fact a treaty, made between belligerent parties with arms in their hands, solemnly ratified by the federal government, on the one part, and the Convention of the State of South Carolina on the other, and deposited among the archives of our country. . . . By that treaty South Carolina bound herself to submit for nine years longer to an unconstitutional and most oppressive tariff, in consideration that its exactions should be gradually reduced during that period. . . . In 1842 the period arrived for the federal government to fulfil its stipulations and reduce the tariff to twenty per cent ad valorem or lower. . . . But, instead of reducing them, the rates of duties were increased . . . to a higher point than the tariff which South Carolina had declared null and void within her own limits in 1832; which declaration led to the Compromise Act. History furnishes no instance of a grosser or more insulting breach of faith, while perhaps no law has ever been enacted by the regular government of a civilized country so subversive of the rights and destructive to the interests of any respectable portion of its people as the tariff of 1842, considered in all its bearings, is to the rights and interests of the planting

States of this Confederation. It might naturally have been expected that this State . . . would immediately nullify the Act ; but she did not. Closely united at the time with the great Democratic party of the Union on the general principle of government, and on certain questions of federal policy of the utmost moment, seeing that this policy had carried the election to the House of Representatives by a large majority, she paused and determined to await the action of another Congress. The new Congress met. . . . Propositions were made in both branches to modify the tariff, and signally defeated. In the House, where the Democratic majority was large, the proposition was disposed of almost without debate ; and a majority of the Democrats north of the Potomac actually voted against it. There seems to be no reasonable or even plausible ground on which to rest a hope that this law . . . will ever be repealed, or reduced to the standard of the compromise. . . .

Under these circumstances, it devolves on South Carolina to decide what course she will pursue in reference to the tariff. . . . It appears to me that our State is bound, by her past history and the principle she professes, . . . to adopt such measures as will bring all her moral, constitutional, and, if necessary, her physical resources in direct array against a policy which has never been checked but by her interposition, and which impoverishes our country, revolutionizes our government, and overthrows our liberties. *South Carolina Laws* (1844).

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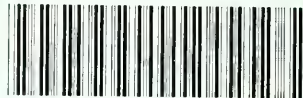


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